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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 879.

THE INTERSTATE COMMERCE COMMISSION AND THE
UNITED STATES, APPELLANTS,

VS.

GOODRICH TRANSIT COMPANY,

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 8, 1911.

(22955)



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a United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,
vs.

THE INTERSTATE COMMERCE COMMISSION, RE-
spondent; The United States, intervening
respondent. No. 21.

UNITED STATES OF AMERICA, ss:

Be it remembered that in the United States Circuit Court for the Northern District of Illinois, eastern division, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill of complaint and exhibit.

(Re Special Report Series Circular Number 10.)

Filed December 29, 1910.

1 In the United States Circuit Court for the Northern District of Illinois, Eastern Division.

GOODRICH TRANSIT COMPANY, COMPLAINANT,
v.

THE INTERSTATE COMMERCE COMMISSION,
defendant. In equity. No. 30254.

To the Honorable the Judges of the Circuit Court of the United States within and for the Northern District of Illinois:

Goodrich Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, brings this its bill of complaint against the Interstate Commerce Commission, and thereupon your orator avers:

(1) That it, the said Goodrich Transit Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, and that it has its principal operating office in the city of Chicago, in the eastern division, Northern District of the State of Illinois.

(2) That the defendant, the Interstate Commerce Commission, has been created and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

2 (3) That your orator was organized in the year 1906, and since the date of its organization it has been engaged in the transportation of passengers and freight for hire on Lake Michigan, Lake Huron, and the rivers tributary thereto; that it owns and operates its business, ten steamers and one tug; that in addition to the foregoing your

orator also owns or leases certain dock properties in the States of Illinois, Wisconsin, and Michigan; that said dock properties are located on Lakes Michigan and Huron, or at or near the mouths of rivers and tributaries thereof, and are used by your orator as landing places at which its steamers, engaged in the business aforesaid, can from time to time dock and discharge and take on their freight and passengers; that your orator, by means of said ten steamers and one tug, is engaged in the following business:

(a) Said steamers carry, for hire, passengers and freight originating at ports in the States of Michigan, Wisconsin, and Illinois, and destined to ports in each of the States of Wisconsin, Michigan, and Illinois. This transportation is entirely by water and unconnected with any land transportation whatever; that is, your orator is engaged in "port to port" interstate business.

(b) Said steamers carry, for hire, passengers and freight originating at and destined to ports in the same State, and not passing out of said State en route; that is to say, your orator is engaged in intrastate "port to port" business.

(c) Your orator has voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried, under joint tariffs; that for the purpose of establishing such through routes it has voluntarily filed with the Interstate Commerce Commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers; that your orator's said steamers carry, for hire, passengers and freight under said joint tariffs over the water portion of said through routes.

(4) Your orator avers that more than 80 per cent of the gross revenue derived by your orator from all of its business as a common carrier, as aforesaid, is derived by your orator from its "port to port" business and intrastate business, as aforesaid, and that less than 20 per cent of said gross revenue is derived from its joint rail and water business.

(5) Your orator further avers it has no power of condemnation; that it is subject to the fiercest competition, and that any person, firm, or corporation at any time may compete with your orator by placing a boat of any kind or character in service between the ports at which the boats of your orator touch and transact business; that no capital of any kind is required to engage in such competitive business except a sufficient amount to build, purchase, or charter a boat, and to pay the charges necessary to operate the same.

(6) Your orator avers that there is no monopoly of docking privileges or terminal facilities at any point at which the boats of your orator touch, and that any person, firm, or corporation desiring to compete with your orator may, upon the payment of a reasonable dockage fee, acquire docking or terminal facilities in each and every of the ports at which your orator's boats touch.

4 (7) Your orator further avers that heretofore, to wit, on the 11th day of June, 1910, the said the Interstate Commerce

Commission, acting under the authority claimed by it to have been conferred upon it by section 20 of the "act to regulate commerce," approved June 29, 1906, entered its certain order as follows, to wit:

"It is ordered that Special Report Series Circular No. 10, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, be, and the same is hereby approved; that a copy of the said Special Report Series Circular No. 10 be sent to each and every carrier by water within the jurisdiction of this commission; that each and every of the said carriers by water be required to make full and true answers to the several inquiries contained in the said Special Report Series Circular No. 10, and to verify its said answers by the oath of the president or other principal officer of such company, and that the said oath be in the form provided in the said Special Report Series Circular No. 10.

"It is further ordered that October 31, 1910, be, and is hereby, fixed as the date on or before which the said answers shall be filed."

That afterwards, to wit, on the 31st day of October, 1910, the said the Interstate Commerce Commission entered a certain other general order extending the time for compliance with said order of June 11th, 1910, up to and including the 31st day of December, 1910.

Your orator attaches hereto and marks "Exhibit A," and makes a part hereof a copy of said special report referred to in said order of June 11, 1910, entered by the said the Interstate Commerce Commission, being Special Report Series Circular No. 10.

(8) Your orator avers that a copy of said order was duly served upon the principal officer of your orator at his usual place of business in the city of Chicago; that said the Interstate Commerce Commission has notified your orator that it will require from your orator on or before the 31st day of December, 1910, an answer to each, every, and all of the questions propounded in said Special Report Series Circular No. 10, referred to in the said order of June 11, 1910, and that your orator will be liable to the penalties prescribed in said section 20 of the act to regulate commerce, as amended by the act approved June 18, 1910, unless your orator files with it, the said the Interstate Commerce Commission, on or before December 31, 1910, a full, true, perfect, and complete answer to each, every, and all of the questions contained in said Special Report Series Circular No. 10.

(9) Your orator avers that in the interrogatories contained in said Special Report Series Circular No. 10, served by said the Interstate Commerce Commission upon your orator, to which an answer is demanded by the said commission from your orator, no distinction is made by the said commission in any or either of said questions between the business transacted by your orator which is solely intra-state business and the business transacted by your orator which is wholly "port to port" business, and the business which is transacted by your orator as the result of the joint rail and water routes to which it has become a voluntary party, as hereinabove set forth. But your orator avers that because of the fact that your orator has

voluntarily become a party to the joint rail and water routes hereinabove referred to, the said the Interstate Commerce Commission, acting under the pretended authority of section 20 hereinabove referred to claims and insists that it has jurisdiction over all of the business of your orator, regardless of its nature or of the places between which it is transacted.

(10) Your orator avers that the Interstate Commerce Commission was created in the year 1887; that though substantially the same authority and duty were imposed at that time upon it with respect to requiring reports from carriers engaged in the business in which your orator is now engaged, as hereinabove set forth, the said the Interstate Commerce Commission has never, prior to the entry of the order herein complained of, required any reports from the water carriers generally, of which your orator is one; and that the said Interstate Commerce Commission has not, since the organization of your orator in 1906, required any report of any kind or character from your orator.

Your orator further shows that the Interstate Commerce Commission on January 7, 1909, in opinion No. 787, interpreting the "act to regulate commerce" and its powers thereunder, made the following ruling, to wit:

"That carriers of interstate commerce by water are subject to the act to regulate commerce only in respect to traffic transported under a common control, management, or arrangement with a rail carrier, and in respect to traffic not so transported they are exempt from its provisions."

(11) Your orator further shows that the Interstate Commerce Commission, when it entered the order of June 11th, 1910, hereinabove referred to, did not enter it because of any duty imposed upon it under and by virtue of any other act of Congress heretofore passed except the "act to regulate commerce," and your orator avers that there was no other act in existence conferring any authority or imposing any duty upon the Interstate Commerce Commission with respect to water carriers, of which as your orator avers it is one, except the "act to regulate commerce" and the amendments thereto.

(12) Your orator avers that said inquiries were not propounded by the Interstate Commerce Commission for the purpose of exacting evidence embraced under any complaint filed for violations of the "act to regulate commerce" or for the purpose of making any investigation that might have been made the object of a complaint under the act.

(13) Your orator avers that by reference to Special Reports Series Circular No. 10 it will appear that it is impossible to answer a large number of the questions contained in said document without divulging to the Interstate Commerce Commission and to the public information with respect to the details of that portion of your orator's business which is solely intrastate and of that portion of your orator's business which is solely "port to port."

(14) Your orator avers that a large number of the inquiries propounded in said Special Report Series Circular Number 10 relate solely to the internal affairs of your orator, and it is impossible to answer said questions or any or either of them without reporting to the said the Interstate Commerce Commission all of the details in connection with the internal management of your orator's business.

(15) Your orator avers that under the order as drafted and entered by said the Interstate Commerce Commission, no segregation is made between any or either of the questions contained in said circular, but under and by virtue of said order your orator is
8 required to make full and true answers to all of the questions therein contained, and your orator avers that there is no question contained in said Special Report Series Circular Number 10 which relates solely to that portion of your orator's business which results from the joint rail and water routes to which your orator voluntarily became a party with rail carriers.

(16) Your orator avers (a) that under the Constitution of the United States no power was conferred upon the Congress of the United States to regulate or to inquire into the internal affairs of any corporation organized under the laws of the State of Maine or of any other State; (b) that under the Constitution of the United States no power was conferred upon the Congress of the United States to delegate unto any commission or other subordinate body the right to regulate or inquire into the internal affairs of any corporation organized under the laws of the State of Maine or of any other State; (c) that such power as the Congress has to pass section 20 of the "act to regulate commerce," as amended in June, 1906, and as amended by the act approved June 18, 1910, is derived solely from that provision of the Constitution of the United States reading as follows:

"Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes,"

and that under and by virtue of the grant of power contained in the provision of the Constitution hereinabove last quoted no power was conferred upon the Congress of the United States to regulate any commerce which is wholly intrastate or to make any inquiries respecting commerce which is wholly intrastate; (d) that under and by

virtue of the "act to regulate commerce" the Congress of
9 the United States did not confer, upon the Interstate Commerce Commission the power or the right to require your orator to answer either or any or each, every, and all of the questions contained in said Special Report Series Circular Number 10; (e) that under the terms of the first section of the "act to regulate commerce," as now amended, it is provided that:

"The provisions of this act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State

or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory * * *, provided, however, that the provisions of this act shall not apply to the transportation of passengers or property or the receiving, delivering, storing, or handling of property wholly within one State and not shipped to or from a foreign country * * *."

(f) That under and by virtue of the provision aforesaid all of the business of your orator which is wholly intrastate or wholly "port-to-port" business is excluded by the terms of the act from the provisions of the act, and your orator avers that it was not the intention of the Congress, by the passage of the act to confer upon the Interstate Commerce Commission the right to inquire into either the internal affairs of your orator or with respect to the intrastate business of your orator or the "port-to-port" business of your orator.

(17) Your orator further avers that under the Constitution of the United States, the power was not conferred upon the Congress of the United States to require your orator to answer any or either, or to answer each, every, and all of the questions propounded in said Special Report Series Circular No. 10; that under the Constitution of the United States the power was not conferred upon Congress to delegate unto the Interstate Commerce Commission the duty or the power to require your orator to answer any or either, or each, every, and all of the questions contained in Special Report Series Circular No. 10.

(18) Your orator farther avers that the Congress of the United States did not, by the passage of the act to regulate commerce, or any or either of the amendments thereto, confer upon the Interstate Commerce Commission the power or authority to require your orator to answer any or either, or to answer each, every, and all of the interrogatories propounded in said Special Report Series Circular No. 10.

(19) Your orator therefore avers that the order of the Interstate Commerce Commission entered June 11, 1910, is void, for the following reasons:

(a) Because Congress was without power to make such inquiries or investigations itself, or to require answers to any or either, or to each, every, and all of the interrogatories propounded in Special Report Series Circular No. 10.

(b) Because Congress was without power to delegate such authority to the Interstate Commerce Commission.

(c) Because Congress did not delegate such power to the Interstate Commerce Commission.

11 (d) Because the exercise of such power, either by Congress or by the Interstate Commerce Commission, would be in violation of the fourth amendment to the Constitution of the United States prohibiting unreasonable searches or seizures.

(f) Because the information sought by said inquiries is a property right of this complainant and the requirement by the Interstate Commerce Commission, acting under the pretended authority of section

20 of the act to regulate commerce, aforesaid, is the taking of the property of this defendant without compensation and without due process of law, in violation of the fifth amendment to the Constitution of the United States.

(20) Your orator further avers that if section 20 of the act to regulate commerce should be construed as conferring upon the Interstate Commerce Commission the right to require your orator to answer each, every, and all of the question propounded to your orator in Special Report Series Circular No. 10, then your orator avers that said section 20 of the act to regulate commerce is void, for the reason that the Constitution of the United States did not confer upon the Congress the authority to require from your orator answers to each, every, and all of said interrogatories, and did not confer upon the Congress the power to delegate such authority to the Interstate Commerce Commission. And because in section 20 of the act to regulate commerce no distinction is made between reports respecting interstate commerce and intrastate commerce, and said section 20 is so drafted that it is impossible to interpret the same as meaning anything other than that such reports, if any, as should be required thereunder should include reports with respect both to interstate commerce and intrastate commerce, and because the requiring of your orator to answer each, every, and all of said interrogatories is not a regulation of interstate commerce, but is an investigation into the private and internal affairs of your orator, and because the answering of such inquiries not being a regulation of interstate commerce, the requirement that such inquiries be answered is in violation of the fourth amendment to the Constitution of the United States in that it would be an unreasonable search and seizure with respect to your orator's business, and is also in violation of the fifth amendment to the Constitution of the United States in that it would be a taking of your orator's property without due process of law and without compensation.

(21) Your orator avers that notwithstanding that said order is void, if your orator fails to file, on or before the 31st day of December, 1910, an answer to each, every, and all of the questions propounded by said the Interstate Commerce Commission in Special Report Series Circular Number 10, then said the Interstate Commerce Commission will bring or cause to be brought a large number of suits against your orator to recover the penalties claimed by it to be due from your orator to the United States because of your orator's failure to comply with said void order, whereby your orator will be subjected to a great multiplicity of suits, and great loss and damage will be inflicted upon your orator.

Which acts and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator.

13 (22) Your orator therefore prays that upon the filing of this bill a temporary or interlocutory order may be entered herein, suspending the said order of said Interstate Commerce Commission and restraining said commission from taking any steps or instituting any proceedings to enforce said order, and that upon a final hearing

of this cause a decree be entered herein, enjoining, setting aside, annulling, or suspending the said order of the said Interstate Commerce Commission, and perpetually enjoining the enforcement of said order and perpetually enjoining the said commission, or its members, their agents, servants, and representatives, from enforcing the said order and from taking any steps or taking any proceedings toward the enforcement of said order.

(23) Your orator further prays that if, in the judgment of this honorable court, the said Interstate Commerce Commission has the authority to require an answer to any or either of the questions contained in said Special Report Series Circular Number 10, that the said court will, upon the final hearing of this cause, enter an order herein specifically designating such questions, if any, contained in said Special Report Series Circular Number 10 which the said Interstate Commerce Commission may lawfully require your orator to answer, and enjoining, setting aside, annulling and suspending the order of said Interstate Commerce Commission with respect to each and every of the other remaining questions contained in said Special Report Series Circular Number 10, and perpetually enjoining the enforcement of said order with respect to such remaining questions and each of them, and perpetually enjoining the said defendant and its members, their agents, servants, and representatives from enforcing the said order with respect to any or either of the
 14 questions so restrained, and from taking any steps or any proceedings toward the enforcement of said order with respect to such last-mentioned questions.

(24) Your orator further prays that if any delay intervenes between the filing of this bill and the issuance of a temporary interlocutory order, as prayed for herein, an order be issued herein suspending the said order of the said Interstate Commerce Commission and enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein.

And your orator further prays that such other and further relief be granted in the premises as justice and equity may require.

(25) Your orator prays that your honors may grant unto your orator the writ of subpoena of the United States of America, directed to the said Interstate Commerce Commission, commanding it on a certain day and under a certain penalty herein to be specified, personally to be and appear in this honorable court, and then and there full, true, and complete answer to make to all and singular the premises, but not under oath, the answer under oath being hereby expressly waived, and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray, etc.

GOODRICH TRANSIT COMPANY,
 By WINSTON, PAYNE, STRAUN, AND SHAW,
Its Solicitors.

15 STATE OF ILLINOIS,
County of Cook, ss:

Albert W. Goodrich, being first duly sworn, says that he is the president of Goodrich Transit Company, complainant in the above-entitled cause; that he knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

ALBERT W. GOODRICH.

Subscribed and sworn to before me this 29th day of December, A. D. 1910.

[NOTARIAL SEAL.]

JESSE B. HAWKES,
Notary Public.

[Exhibit A omitted in printing, per stipulation.]

63 Certificate of the Acting Attorney General.

Filed December 29, 1910.

In the Circuit Court of the United States for the Northern District of Illinois.

GOODRICH TRANSIT COMPANY,
vs.

INTERSTATE COMMERCE COMMISSION. } No. 30254.

To the clerk of said court:

I hereby certify that the above entitled cause, now pending in said court, is a suit in equity, brought for the purpose of enjoining and setting aside an order of the Interstate Commerce Commission, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,'" approved February 11, 1903, and complying with the provisions of the act to regulate commerce of February 4, 1887, as amended by the act of June 29, 1906, and more particularly of section 16 of said act, you will file this certificate among the records of the above entitled court, and immediately furnish a copy thereof to each of the circuit judges of the Seventh Circuit, to the end that said case shall be given precedence over other cases in said court and be assigned for hearing

64 at the earliest practicable date, before not less than three of the circuit judges of said circuit, as provided by the said act of February 11, 1903.

J. A. FOWLER,
Acting Attorney General.

WASHINGTON, D. C., December 28, 1910.

Filed December 30, 1910.

In the Circuit Court of the United States of America for the Northern District of Illinois, Eastern Division.

GOODRICH TRANSIT COMPANY, COMPLAINANT,	} In equity. No. 30254.
<i>v.</i>	
THE INTERSTATE COMMERCE COMMISSION, defendant.	

Demurrer of the Interstate Commerce Commission, the above-named defendant, to the bill of complaint of the above-named complainant.

DEMURRER.

The Interstate Commerce Commission, the defendant in the above-entitled suit, by protestation, not confessing or acknowledging any of the matters or things in the bill of complaint of the above-named complainant contained to be true in such manner and form as therein set forth and alleged, demurs to said bill. And for cause of demurrer shows—

I.

That said complainant has not, in and by its said bill, shown any equity existing in it.

II.

That said complainant has not, in and by said bill, shown that it is entitled to the relief or any of the relief prayed for by it in and by said bill.

III.

That said complainant has not, in and by said bill, shown that the legislative department of the Government of the United States is or ever has been without power to grant the authority exercised by this defendant in making the order dated June 11, 1910, set forth in said complainant's said bill.

IV.

That said complainant has not, in and by said bill, shown that said legislative department did not duly confer upon this defendant the authority exercised by this defendant in making said order.

V.

That said complainant has not, in and by said bill, shown that the subject matter of said order is not within the jurisdiction conferred upon this defendant by said legislative department.

VI.

That said complainant has not, in and by said bill, shown that in making said order this defendant exercised authority in excess of the authority conferred upon it by said legislative department.

VII.

That said complainant has not, in and by said bill, shown that in making said order this defendant exercised unlawfully the authority or any of the authority conferred upon it by said legislative department.

VIII.

That said complainant has not, in and by said bill, shown that in making said order this defendant violated any constitutional or other right of said complainant over which this court has or may exercise jurisdiction.

Wherefore and for divers other good causes of demurrer appearing in and by said bill, this defendant demurs thereto and prays the judgment of this honorable court whether defendant shall be compelled to make any answer to the said bill or any part thereof.

67

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL,
Its Solicitor.

EDWIN W. SIMS,
United States Attorney, Chicago, Illinois.

P. J. FARRELL,
Special Assistant United States Attorney, Washington, D. C.
Solicitors for Interstate Commerce Commission.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

P. J. FARRELL,
Solicitor for Defendant, Interstate Commerce Commission.

CHICAGO, ILLINOIS,
County of Cook, ss:

P. J. Farrell, being first duly sworn, says on oath that he is the solicitor of the Interstate Commerce Commission, the defendant in the above-entitled suit, and that the foregoing demurrer is not interposed for delay.

Subscribed and sworn to before me, William A. Small, a notary public in and for said county of Cook, this 30th day of December, 1910.

[NOTARIAL SEAL.]

WILLIAM A. SMALL,
Notary Public.

68 *Temporary restraining order.*

Entered December 31, 1910.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division, Saturday, December 31, 1910.

Present: Honorable Peter S. Grosscup, circuit judge; Honorable Francis E. Baker, circuit judge; Honorable William H. Seaman, circuit judge.

GOODRICH TRANSIT COMPANY	}	30254.
<i>vs.</i>		
THE INTERSTATE COMMERCE COMMISSION.		

This day, this cause coming on to be heard on motion of complainant for a temporary restraining order, all parties being before the court, the court having heard the arguments of counsel, the court doth order and it is hereby ordered that, the court not having had sufficient time to fully consider this application, the order of the commission complained of is stayed until the further order of this court.

69 *Order transferring cause to the United States Commerce Court.*

Entered February 25, 1911.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division, Saturday, February 25, 1911.

Present: Hon. Christian C. Kohlsaat, circuit judge.

GOODRICH TRANSIT COMPANY,	}	30254.
<i>vs.</i>		
THE INTERSTATE COMMERCE COMMISSION.		

It is ordered by the court that the clerk of this court transmit to and file in the United States Commerce Court the originals of all papers filed in this case, and a certified transcript of all record entries up to and including this date, in compliance with section 6 of an act to create a Commerce Court and to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes, approved June 18, 1910.

70 *Certificate of clerk of United States Circuit Court for the Northern District of Illinois, Eastern Division.*

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, ss:

I, John H. R. Jamar, clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be true and complete copies of the certain orders entered of record in said court on the thirty-first day of December, 1910, and on the twenty-fifth day of February, 1911, in the cause entitled Goodrich Transit Company vs. The Interstate Commerce Commission, as the same appear from the original record thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in the city of Chicago, in said district, this first day of March, 1911.

[Seal of the United States Circuit Court, Northern District of Illinois.]

JOHN H. R. JAMAR, *Clerk.*

71 *Certificate of clerk of United States Circuit Court for the Northern District of Illinois, Eastern Division, transmitting original files to the United States Commerce Court.*

Filed in United States Commerce Court March 6, 1911.

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, ss:

I, John H. R. Jamar, clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify that in compliance with section 6 of an act to create a Commerce Court and to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes, approved June 18, 1910, I herewith transmit to the Commerce Court all the original files in the cause entitled Goodrich Transit Company vs. the Interstate Commerce Commission, General No. 30254.

Bill of complaint together with Exhibit A thereto attached filed December 29, 1910.

Certificate of Attorney General filed December 29, 1910.

Demurrer filed December 30, 1910.

Draft of order entered of record February 25, 1911.

In testimony whereof I hereunto set my hand and affixed the seal of said court, at my office in the city of Chicago, in said district, this twenty-eighth day of February, 1911.

[Seal of United States Circuit Court, Northern District of Illinois.]

JOHN H. R. JAMAR, *Clerk.*

72 Be it further remembered that said cause having been transferred to the United States Commerce Court in accordance with section 6 of the act of Congress approved June 18, 1910, the following

14 INTERSTATE COMMERCE COMMISSION VS. GOODRICH TRANSIT CO.

papers were filed and proceedings had in said United States Commerce Court, in said cause, at the times hereinafter mentioned, to wit:

73 *Order permitting United States to intervene.*

Filed April 3, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

In this cause the United States moves the court that it be permitted to intervene and to become a party defendant; and it appearing to the court that the cause involves public interests, the motion is allowed, and the United States is made a party defendant accordingly, and, having presented its answer to complainant's bill, the same was ordered to be filed.

74 *Journal entry.*

Proceedings of April 3, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

Upon request of counsel said causes were assigned for argument with numbers twenty-three and twenty-four on Wednesday, April 12, 1911, after number 15.

75 *Answer of the United States.*

Filed April 4, 1911.

In the United States Commerce Court.

April term, 1911.

GOODRICH TRANSIT COMPANY, COMPLAINANT,	}	No. 21.
<i>v.</i>		
THE UNITED STATES.		

ANSWER OF THE DEFENDANT, THE UNITED STATES.

The defendant, the United States, for answer to the bill of complaint filed in this cause, says:

I.

It admits each and every allegation of fact contained therein, except as follows:

While it is true that the requirements made by the orders set forth in the original bill make no distinction between the books which complainant may keep and its method of accounting for its income and expenses in connection with its intrastate business, and its port-to-port business, as separate from the business which is transacted by complainant as the result of its joint rail and water routes, yet defendant avers that in said orders it did not make such distinction, because:

76 First. While the income from each of the different kinds of business stated in the bill can with reasonable accuracy be ascertained, yet it is impossible to determine with any substantial degree of accuracy the expenses incurred in either of them as separate and distinct from those incurred in the others.

Second. It is essential that the commission be informed as to the total income derived by complainant from all of its investments and from all sources, in order that the commission may determine what are reasonable and just rates to be charged by complainant in its joint rail and water business, and to determine whether or not in all respects it complies with the provisions of the laws of the United States regulating interstate commerce.

Defendant further avers that the method of bookkeeping devised by the commission and which it has ordered complainant to adopt, is the result of long experience and careful investigation, and is the one best adapted to the formulation and preservation of accurate data for the information of the commission in the performance of the duties imposed upon it by acts of Congress; and that, in the absence of a method prescribed by the commission, it is within the power of a carrier to easily manipulate its books, and especially the report of its business taken therefrom, in such a way as to conceal rather than to reveal the true state of its business; and that it is of the most vital importance that the commission have in its possession reliable and accurate information upon all matters specified in the orders set forth in the original bill and the exhibits attached thereto, in order

77 to enable it with any degree of efficiency and satisfaction to perform its various duties as provided for in the interstate commerce law; and that, therefore, there is a most material and substantial relationship between said orders and each and every part thereof, and the interstate commerce carried by complainant and such part thereof as is carried under the joint arrangement between it and railroad companies.

II.

While defendant admits all other allegations of fact contained in the original bill, yet it does not admit, but denies, all inferences of fact from particular facts alleged and all conclusions of law insisted upon in the bill.

And now, having fully answered, defendants pray to be hence dismissed.

GEO. W. WICKERSHAM,
Attorney General of the United States.
 J. A. FOWLER,
Assistant Attorney General.
 BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

APRIL, 1911.

78

Journal entry.

Proceedings of April 11, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 23.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 24.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

Upon request of counsel, the hearing of said causes was postponed until Monday, April 17, 1911.

79

Appearance of Charles W. Needham.

Filed April 17, 1911.

APRIL 17, 1911.

The clerk of the United States Commerce Court,
Washington, D. C.

SIR: Please enter my appearance as attorney for the Interstate Commerce Commission in Nos. 21, 22, 23, and 24.

Very respty.,

CHAS. W. NEEDHAM.

80

Journal entry.

Proceedings of April 17, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	}	No. 22.
<i>vs.</i>		
GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 23.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	}	No. 24.
<i>vs.</i>		
WHITE STAR LINE, PETITIONER,	}	No. 25.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.	}	No. 26.
<i>vs.</i>		
WHITE STAR LINE, PETITIONER,	}	No. 27.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.	}	No. 28.
<i>vs.</i>		

Said causes came on for hearing on the demurrers in numbers 21 and 22 and the motions to dismiss in numbers 23 and 24, and the arguments of counsel were commenced, Mr. Charles W. Needham appearing in behalf of the Interstate Commerce Commission and Mr. Ralph M. Shaw in behalf of the petitioners.

Petitioners were given leave to file amended bills in numbers 21 and 22, with the understanding that the demurrers of the Interstate Commerce Commission interposed to the original bills stand as demurrers to the amended bills.

81

Amended bill of complaint and exhibit.

(Re Special Report Series Circular No. 10.)

Filed in United States Commerce Court, April 17, 1911.

In the United States Circuit Court for the Northern District of Illinois, Eastern Division.

GOODRICH TRANSIT COMPANY, COMPLAINANT,	}	In equity.
<i>v.</i>		
THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.	}	
<i>v.</i>		

To the honorable the judges of the Circuit Court of the United States within and for the Northern District of Illinois:

Goodrich Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, brings this its bill of complaint against the Interstate Commerce Commission, and thereupon your orator avers:

(1) That it, the said Goodrich Transit Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, and that it has its principal operating office in the city of Chicago, in the Eastern Division, Northern District of the State of Illinois.

(2) That the defendant, the Interstate Commerce Commission, has been created and now exists under and by virtue of an act of Congress

- of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

(3) That your orator was organized in the year 1906, and since the date of its organization it has been engaged in the transportation of passengers and freight for hire on Lake Michigan, Lake Huron, and the rivers tributary thereto; that it owns and operates its business, ten steamers and one tug; that in addition to the foregoing your orator also owns or leases certain dock properties in the States of Illinois, Wisconsin, and Michigan; that said dock properties are located on Lakes Michigan and Huron, or at or near the mouths of rivers and tributaries thereof, and are used by your orator as landing places at which its steamers, engaged in the business aforesaid, can from time to time dock and discharge and take on their freight and passengers; that your orator, by means of said ten steamers and one tug, is engaged in the following business:

(a) Said steamers carry for hire passengers and freight originating at ports in the States of Michigan, Wisconsin, and Illinois, and destined to ports in each of the States of Wisconsin, Michigan, and Illinois. This transportation is entirely by water and unconnected with any land transportation whatever; that is, your orator is engaged in "port to port" interstate business.

(b) Said steamers carry for hire passengers and freight originating at and destined to ports in the same State, and not passing out of said State en route; that is to say, your orator is engaged in intrastate "port to port" business.

(c) Your orator has voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried, under joint tariffs; that for the purpose of establishing such through routes it has voluntarily filed with the Interstate Commerce Commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers; that your orator's said steamers carry for hire passengers and freight under said joint tariffs over the water portion of said through routes.

(4) Your orator avers that more than 80 per cent of the gross revenue derived by your orator from all of its business as a common carrier, as aforesaid, is derived by your orator from its "port-to-port" business and intrastate business, as aforesaid, and that less than 20 per cent of said gross revenue is derived from its joint rail and water business.

(5) Your orator further avers it has no power of condemnation; that it is subject to the fiercest competition, and that any person, firm, or corporation at any time may compete with your orator by placing a boat of any kind or character in service between the ports at which the boats of your orator touch and transact business; that no capital of any kind is required to engage in such competitive business except a sufficient amount to build, purchase, or charter a boat and to pay the charges necessary to operate the same.

(6) Your orator avers that there is no monopoly of docking privileges or terminal facilities at any point at which the boats of your orator touch, and that any person, firm, or corporation desiring to compete with your orator may, upon the payment of a reasonable dockage fee, acquire docking or terminal facilities in each and every of the ports at which your orator's boats touch.

84 (7) Your orator further avers that heretofore, to wit, on the 11th day of June, 1910, the said the Interstate Commerce Commission, acting under the authority claimed by it to have been conferred upon it by section 20 of the "Act to regulate commerce," approved June 29, 1906, entered its certain order as follows, to wit:

"It is ordered, that Special Report Series Circular No. 10, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, be, and the same is hereby, approved; that a copy of the said Special Report Series Circular No. 10 be sent to each and every carrier by water within the jurisdiction of this commission; that each and every of the said carriers by water be required to make full and true answers to the several inquiries contained in the said Special Report Series Circular No. 10, and to verify its said answers by the oath of the president or other principal officer of such company, and that the said oath be in the form provided in the said Special Report Series Circular No. 10.

"It is further ordered, that October 31, 1910, be, and is hereby, fixed as the date on or before which the said answers shall be filed."

That afterwards, to wit, on the 31st day of October, 1910, the said the Interstate Commerce Commission entered a certain other general order extending the time for compliance with said order of June 11, 1910, up to and including the 31st day of December, 1910.

Your orator attaches hereto and marks "Exhibit A," and makes a part hereof, a copy of said special report referred to in said order of June 11, 1910, entered by the said the Interstate Commerce Commission, being Special Report Series Circular No. 10.

(8) Your orator avers that a copy of said order was duly 85 served upon the principal officer of your orator at his usual place of business in the city of Chicago; that said the Interstate Commerce Commission has notified your orator that it will require from your orator on or before the 31st day of December, 1910, an answer to each, every, and all of the questions propounded in said Special Report Series Circular No. 10 referred to in the said order of June 11, 1910, and that your orator will be liable to the penalties prescribed in said section 20 of the act to regulate commerce, as amended by the act approved June 18, 1910, unless your orator files with it, the said the Interstate Commerce Commission on or before December 31, 1910, a full, true, perfect, and complete answer to each, every, and all of the questions contained in said Special Report Series Circular No. 10.

(9) Your orator avers that in the interrogatories contained in said Special Report Series Circular No. 10, served by said the Interstate Commerce Commission upon your orator, to which an answer is demanded by the said commission from your orator, no distinction is

made by the said commission in any or either of said questions between the business transacted by your orator which is solely intrastate business and the business transacted by your orator which is wholly "port-to-port" business and the business which is transacted by your orator as the result of the joint rail and water routes to which it has become a voluntary party, as hereinabove set forth. But your orator avers that because of the fact that your orator has voluntarily become a party to the joint rail and water routes hereinabove referred to the said the Interstate Commerce Commission, acting under the pretended authority of section 20 hereinabove referred to, claims and insists that it has jurisdiction over all of the
 86 business of your orator, regardless of its nature or of the places between which it is transacted.

(10) Your orator avers that the Interstate Commerce Commission was created in the year 1887, that though substantially the same authority and duty were imposed at that time upon it with respect to requiring reports from carriers engaged in the business in which your orator is now engaged, as hereinabove set forth, the said the Interstate Commerce Commission has never, prior to the entry of the order herein complained of, required any reports from the water carriers generally, of which your orator is one, and that the said Interstate Commerce Commission has not since the organization of your orator, in 1906, required any report of any kind or character from your orator.

That though for many years your orator and other water carriers have voluntarily agreed with some interstate carriers by railroad to establish a limited number of through routes over which passengers or property have been transported by a continuous carriage, and have filed tariffs therefor with the Interstate Commerce Commission, that said commission have never before ruled or claimed that by filing such tariffs your orator or other water carriers thereby subjected themselves to all of the provisions of the act to regulate commerce, or to the provisions of section 20 thereof.

Your orator further shows that the Interstate Commerce Commission on January 7, 1909, in opinion No. 787, interpreting the "act to regulate commerce" and its powers thereunder, made the following ruling, to wit:

"That carriers of interstate commerce by water are subject to the act to regulate commerce only in respect to traffic transported under a common control, management, or arrangement with a rail carrier, and in respect to traffic not so transported they are exempt from its provisions."

(11) Your orator further shows that the Interstate Commerce Commission, when it entered the order of June 11, 1910, hereinabove referred to, did not enter it because of any duty imposed upon it under and by virtue of any other act of Congress heretofore passed except the "act to regulate commerce," and your orator avers
 87 that there was no other act in existence conferring any authority or imposing any duty upon the Interstate Commerce Commission with respect to water carriers, of which, as your orator

avers, it is one, except the "act to regulate commerce" and the amendments thereto.

(12) Your orator avers that said inquiries were not propounded by the Interstate Commerce Commission for the purpose of exacting evidence embraced under any complaint filed for violations of the "act to regulate commerce" or for the purpose of making any investigation that might have been made the object of a complaint under the act or in regard to any case or as to any matter or thing concerning which any complaint is authorized to be made to or before said commission by any provision of the said act or concerning which any question may arise under any of the provisions of said act, or relating to the enforcement of any of the provisions of the said act.

And your orator shows that if the said Special Report Series Circular No. 10 should be construed as containing inquiries concerning any case or as to any matter or thing concerning which a complaint is authorized to be made to or before said commission by any provision of said act or concerning which any question may arise under any of the provisions of said act, or relating to the enforcement of any of the provisions of said act, then your orator avers that not one of said inquiries is reasonably adapted to such purpose, and that there is no legitimate nor necessary connection between the inquiries propounded and such purpose.

(13) And your orator avers that if it should answer the questions contained in said Special Report Series Circular No. 10 and should file said report with the said commission, there is no statute of the United States requiring such report to be kept secret and the
88 report would then and there become a public document and open to the inspection of your orator's competitors either by rail or by water and would be greatly injurious to your orator's business.

By reference to Special Reports Series Circular No. 10 it will appear that it is impossible to answer a large number of the questions contained in said document without divulging to the Interstate Commerce Commission and to the public information with respect to the details of that portion of your orator's business which is solely intrastate and of that portion of your orator's business which is solely "port to port."

(14) Your orator avers that a large number of inquiries propounded in the said Special Report Series Circular No. 10 relates solely to the internal affairs of your orator, and it is impossible to answer said questions, or any or either of them, without reporting to the said the Interstate Commerce Commission all of the details in connection with the internal management of your orator's business, and none of said questions has any reference to or connection with any existing proposed or possible rate, classification, practice, or regulation of your orator or the existence or establishment of any through route, joint classification, or division of joint rates.

(15) Your orator avers that under the order as drafted and entered by said the Interstate Commerce Commission, no segregation is made

between any or either of the questions contained in said circular, but under and by virtue of said order your orator is required to make full and true answers to all of the questions therein contained, and your orator avers that there is no question contained in said Special

Report Series Circular Number 10 which relates solely to that
89 portion of your orator's business which results from the joint rail and water routes to which your orator vountarily became a party with rail carriers.

(16) Your orator avers (a) that under the Constitution of the United States no power was conferred upon the Congress of the United States to regulate or to inquire into the internal affairs of any corporation organized under the laws of the State of Maine or of any other State; (b) that under the Constitution of the United States no power was conferred upon the Congress of the United States to delegate unto any commission or other subordinate body the right to regulate or inquire into the internal affairs of any corporation organized under the laws of the State of Maine or of any other State; (c) that such power as the Congress has to pass section 20 of the "act to regulate commerce" as amended in June, 1906, and as amended by the act approved June 18, 1910, is derived solely from that provision of the Constitution of the United States reading as follows:

"Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes,"

and that under and by virtue of the grant of power contained in the provision of the Constitution hereinabove last quoted no power was conferred upon the Congress of the United States to regulate any commerce which is wholly intrastate or to make any inquiries respecting commerce which is wholly intrastate; (d) that under and by virtue of the "act to regulate commerce" the Congress of the United States did not confer upon the Interstate Commerce Commission the power or the right to require your orator to answer

either or any or each, every, and all of the questions contained
90 in said Special Report Series Circular Number 10; (e) that under the terms of the first section of the "act to regulate commerce" as now amended it is provided that:

"The provisions of this act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory * * *, provided, however, that the provisions of this act shall not apply to the transportation of passengers or property or the receiving, delivering, storing or handling of property

wholly within one State and not shipped to or from a foreign country * * *."

(f) That under and by virtue of the provision aforesaid all of the business of your orator which is wholly intrastate or wholly "port to port" business is excluded by the terms of the act from the provisions of the act, and your orator avers that it was not the intention of the Congress, by the passage of the act to confer upon the Interstate Commerce Commission the right to inquire into either the internal affairs of your orator or with respect to the intrastate business of your orator or the "port to port" business of your orator.

(17) Your orator further avers that under the Constitution of the United States the power was not conferred upon the Congress of the United States to require your orator to answer any or either, or to answer each, every, and all of the questions propounded in said Special Report Series Circular No. 10; that under the Constitution of the United States the power was not conferred upon Congress to delegate unto the Interstate Commerce Commission, the duty or the power to require your orator to answer any or either, or each, every, and all of the questions contained in Special Report Series Circular No. 10.

(18) Your orator further avers that the Congress of the United States did not, by the passage of the "act to regulate commerce," or any or either of the amendments thereto, confer upon the Interstate Commerce Commission the power or authority to require your orator to answer any or either, or to answer each, every, and all of the interrogatories propounded in said Special Report Series Circular No. 10.

(19) Your orator avers that the alleged purpose of the inquiries made in said Special Report Series Circular No. 10 is:

"To procure for the use of the Interstate Commerce Commission such full information of the scope and character of business of carriers by water within its jurisdiction and of the extent of their operations as will enable the commission to determine the form for annual reports that will best give the information required by it and at the same time conform as nearly as may be to the present accounting practices of the carriers by water."

but your orator shows by reference to said Special Report Series Circular No. 10 that none of the inquiries propounded by the said Interstate Commerce Commission in said Exhibit A is so framed as to furnish to the Interstate Commerce Commission any information whatsoever with respect to the joint rail and water business of carriers by water, or the extent of the operations of the joint rail and water business of carriers by water.

92 And your orator further avers, by reference to Exhibit A, that there is no inquiry propounded in said Exhibit A which is limited to the interstate or joint rail and water business of your orator, or which, if answered, would furnish any information with respect to the interstate or joint rail and water business of your orator, or which would enable or aid the Interstate Commerce Commission in arriving at or reaching any conclusion with respect thereto.

And your orator avers that each and every of said inquiries and the information which might or could be obtained by the Interstate Commerce Commission from the answers to each and every of said questions are entirely foreign to the purpose for which it is alleged said inquiries are made and are not reasonably adapted to such purpose and have no legitimate relation either to any complaint which might be filed for any alleged violation of the act or to any investigation that might be made the object of complaint or to any matter or thing concerning which any complaint authorized by the act might be made or to any question which might arise as to any of the provisions of the act or relating to the enforcement of any of the lawful provisions of the act.

(20) Your orator therefore avers that the order of the Interstate Commerce Commission entered June 11, 1910, is void, for the following reasons:

(a) Because Congress was without power to make such inquiries or investigations itself, or to require answers to any or either or to each, every, and all of the interrogatories propounded in Special Report Series Circular No. 10.

(b) Because Congress was without power to delegate such authority to the Interstate Commerce Commission.

93 (c) Because Congress did not delegate such power to the Interstate Commerce Commission.

(d) Because the inquiries, and each of them, propounded in said Special Report Series Circular No. 10 are not limited to the interstate business or joint rail and water business of your orator and are not pertinent nor appropriate to the interstate business or joint rail and water business of your orator, or to the avowed purpose of the Interstate Commerce Commission in making said inquiries, and are not appropriate and have no direct or necessary bearing upon any subject concerning which the Congress or the Interstate Commerce Commission has any jurisdiction and are not reasonably adapted to any purpose within the power either of the Congress or of the Interstate Commerce Commission, and because there is no legitimate nor necessary connection between the interstate business or the joint rail and water business of your orator and the inquiries propounded, or any or either of them.

(e) Because the exercise of such power, either by Congress or by the Interstate Commerce Commission, would be in violation of the fourth amendment to the Constitution of the United States, prohibiting unreasonable searches or seizure.

(f) Because the information sought by said inquiries is a property right of this complainant and the requirement by the Interstate Commerce Commission, acting under the pretended authority of section 20 of the "act to regulate commerce," aforesaid, is the taking of the property of your orator without compensation and without due process of law, in violation of the fifth amendment to the Constitution of the United States.

94 (21) Your orator further avers that if section 20 of the "act to regulate commerce" should be construed as conferring

upon the Interstate Commerce Commission the right to require your orator to answer each, every, and all of the question propounded to your orator in Special Report Series Circular No. 10, then your orator avers that said section 20 of the "act to regulate commerce" is void, for the reason that the Constitution of the United States did not confer upon the Congress the authority to require from your orator answers to each, every, and all of said interrogatories and did not confer upon the Congress the power to delegate such authority to the Interstate Commerce Commission. And because in section 20 of the "act to regulate commerce" no distinction is made between reports respecting interstate commerce and intrastate commerce, and said section 20 is so drafted that it is impossible to interpret the same as meaning anything other than that such reports, if any, as should be required thereunder should include reports with respect both to interstate commerce and intrastate commerce, and because the requiring of your orator to answer each, every, and all of said interrogatories is not a regulation of interstate commerce, but is an investigation into the private and internal affairs of your orator, and because the answering of such inquiries not being a regulation of interstate commerce, the requirement that such inquiries be answered is in violation of the fourth amendment to the Constitution of the United States in that it would be an unreasonable search and seizure with respect to your orator's business, and is also in violation of the fifth amendment to the Constitution of the United States in that it would be a taking of your orator's property without due process of law and without compensation.

(22) Your orator avers that notwithstanding that said order is void, if your orator fails to file, on or before the 31st day of December, 1910, an answer to each, every, and all of the questions propounded by said the Interstate Commerce Commission in Special Report Series Circular No. 10, then said the Interstate Commerce Commission will bring or cause to be brought a large number of suits against your orator to recover the penalties claimed by it to be due from your orator to the United States because of your orator's failure to comply with said void order, whereby your orator will be subjected to a great multiplicity of suits and great loss and damage will be inflicted upon your orator.

Which acts and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator.

(23) Your orator therefore prays that upon the filing of this bill a temporary or interlocutory order may be entered herein, suspending the said order of said Interstate Commerce Commission and restraining said commission from taking any steps or instituting any proceedings to enforce said order, and that upon a final hearing of this cause a decree be entered herein, enjoining, setting aside, annulling, or suspending the said order of the said Interstate Commerce Commission, and perpetually enjoining the enforcement of said order and perpetually enjoining the said commission, or its members, their agents, servants, and representatives from enforcing the said order and from

taking any steps or taking any proceedings toward the enforcement of said order.

96 (24) Your orator further prays that if, in the judgment of this honorable court the said Interstate Commerce Commission has the authority to require an answer to any or either of the questions contained in said Special Report Series Circular No. 10, that the said court will, upon the final hearing of this cause, enter an order herein specifically designating such questions, if any, contained in said Special Report Series Circular No. 10 which the said Interstate Commerce Commission may lawfully require your orator to answer, and enjoining, setting aside, annulling, and suspending the order of said Interstate Commerce Commission with respect to each and every of the other remaining questions contained in said Special Report Series Circular No. 10, and perpetually enjoining the enforcement of said order with respect to such remaining questions and each of them, and perpetually enjoining the said defendant and its members, their agents, servants, and representatives from enforcing the said order with respect to any or either of the questions so restrained, and from taking any steps or any proceedings toward the enforcement of said order with respect to such last-mentioned questions.

(25) Your orator further prays that if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order, as prayed for herein, an order be issued herein suspending the said order of the said Interstate Commerce Commission and enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein.

And your orator further prays that such other and further relief be granted in the premises as justice and equity may require.

97 (26) Your orator prays that your honors may grant unto your orator the writ of subpoena of the United States of America, directed to the said Interstate Commerce Commission, commanding it, on a certain day and under a certain penalty herein to be specified, personally to be and appear in this honorable court, and then and there full, true, and complete answer to make to all and singular the premises, but not under oath, the answer under oath being hereby expressly waived, and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orator will every pray, etc.

GOODRICH TRANSIT COMPANY,
By WINSTON, PAYNE, STRAWN, SHAW,
Its Solicitors.

R. M. SHAW, *of Counsel.*

98 STATE OF ILLINOIS,
County of Cook, ss:

Albert W. Goodrich, being first duly sworn, says that he is the president of Goodrich Transit Company, complainant in the above-

entitled cause; that he knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

ALBERT W. GOODRICH.

Subscribed and sworn to before me this _____ day of February, A. D. 1911.

[NOTARIAL SEAL.]

FRANK P. PAGE,
Notary Public.

[Exhibit A omitted in printing, per stipulation.]

147

Journal entry.

Proceedings of April 18, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 23.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 24.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

Said causes came on for further hearing upon the demurrers and the motions to dismiss the petitions, and the arguments of counsel were continued; Mr. Ralph M. Shaw appearing in behalf of the petitioners and Hon. James A. Fowler in behalf of the United States.

148

Journal entry.

Proceedings of April 19, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 23.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 24.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

Said causes came on for further hearing on the demurrers and the motions to dismiss the petitions, and the arguments of counsel were

concluded; Hon. James A. Fowler appearing in behalf of the United States and Mr. Ralph M. Shaw appearing in behalf of the petitioners. Thereupon the causes were taken under advisement by the court.

Counsel for the respondent Interstate Commerce Commission granted five days to file brief.

Counsel for the petitioners granted ten days after receipt of brief for respondent within which to file brief.

149

Opinion.

Filed October 5, 1911.

United States Commerce Court.

April term, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>v.</i> THE INTERSTATE COMMERCE COMMISSION, RE- spondent. The United States, intervening respondent.	}	No. 21.
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GOODRICH TRANSIT COMPANY, PETITIONER, <i>v.</i> THE INTERSTATE COMMERCE COMMISSION, RE- spondent. The United States, intervening respondent.	}	No. 22.
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WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT. THE INTER- state Commerce Commission, intervening re- spondent.	}	No. 23.
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WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT. THE INTER- state Commerce Commission, intervening re- spondent.	}	No. 24.
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150 Ralph M. Shaw, solicitor for petitioners.
 J. A. Fowler, assistant attorney general, and Charles W.
Needham, solicitor for Interstate Commerce Commission, for re-
spondents.

Before Knapp, presiding judge, and Archbald, Hunt, Carland, and
Mack, judges.

No. 21.

OCT. 5, 1911.

HUNT, Judge:

The Goodrich Transit Co., a corporation organized under the laws
of Maine, filed this bill in equity on December 29, 1910, in the Circuit

Court of the United States for the Northern District of Illinois, eastern division, to obtain an injunction against the enforcement of certain orders of the Interstate Commerce Commission. For the sake of brevity we will hereafter refer to the Goodrich Transit Co. as the transit company and to the Interstate Commerce Commission as the commission.

It appears from the bill that the transit company has its principal operating office in Chicago, Ill., and since its organization in 1906 has been engaged in the transportation of passengers and freight on Lake Michigan, Lake Huron, and the rivers tributary thereto. It owns and operates steamers and dock properties in Illinois, Wisconsin, and Michigan, several of such dock properties being near the mouths of rivers. The docks are used as landing places, where freight and passengers are discharged and taken off. The steamers carry passengers and freight originating at ports of the States of Michigan, Wisconsin, and Illinois, and destined to ports in each of the said States.

151 This transportation is entirely by water and unconnected with any land transportation whatever and is spoken of as "port-to-port" interstate business. The transit company's steamers also carry passengers and freight originating at and destined to ports in the same State, and not passing out of said State en route, and this business is spoken of as "port-to-port" intrastate business.

The bill alleges that the transit company had voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight were being carried under joint tariffs, and that for the purpose of establishing such through routes it had voluntarily filed with the commission its joint tariffs or its concurrence in tariffs filed by such railroad carriers, and that the transit company's steamers carry for hire passengers and freight under said joint tariffs over the water portion of said through routes. It is alleged with some detail that the principal part of the business of the transit company is derived from its port-to-port and intrastate business and that competition is active and open to any who may desire to engage in such business, which includes the privilege of the use of docking and terminal facilities. The bill alleges that on June 11, 1910, the commission entered the following order:

"It is ordered that Special Report Series Circular No. 10, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, be, and the same is hereby, approved; that a copy of the said Special Report Series Circular No. 10 be sent to each and every carrier by water within the jurisdiction of this commission; that each and every of the said carriers by water be required to make full and true answers to the several inquiries contained in the said Special Report Series Circular No. 10, and to verify its said answers by the oath of the president or other principal officer of such company, and that the said oath be in the form provided in the said Special Report Series Circular No. 10."

Attached to the petitioner's bill is a copy of the Special Report Series Circular No. 10, referred to in the order of the commission, dated June 11, 1910, to which said special report we shall have occasion hereafter to refer.

Service of the order is alleged to have been made and notification was given that unless answers to the questions propounded in the special report were made before December 31, 1910, the transit company would be liable to the penalties prescribed in section 20 of the act to regulate commerce, as amended by the act approved June 18, 1910.

The petitioner avers that the interrogatories contained in the special report just referred to made no distinction between the business transacted by the transit company, which was solely intrastate business, and that transacted which was wholly port-to-port business, 153 and that which was the result of joint rail and water routes, to which the transit company became a voluntary party; and it is alleged that, inasmuch as the transit company had voluntarily become a party to the joint rail and water routes referred to, the commission insisted that it had jurisdiction over all the business of the transit company without regard to its nature or the places between which it was transacted. The bill sets up that since the creation of the commission in 1887, never, prior to the entry of the order above referred to, had the commission required any reports from water carriers generally, or any report of any kind from this particular petitioner.

It is further alleged that the commission, on January 7, 1909, construed the act to regulate commerce as subjecting carriers of interstate commerce by water to the provisions of the act only in respect to traffic transported under a common control, management, or arrangement with a rail carrier.

It is set forth that the inquiries made by the commission were not for the purpose of exacting evidence under any complaint filed for violation of the act to regulate commerce or for the purpose of making investigations that might have been made the object of a complaint; that a large number of the questions propounded in the special report called for pertained solely to the internal affairs of the company, and that it is impossible to answer them without reporting to the commission details in connection with the internal management 154 of the business of the transit company; and it is pleaded that the commission has no constitutional authority to regulate or to inquire into the internal affairs of the transit company, and is without power to regulate commerce which is wholly intrastate or to make inquiries respecting commerce which is wholly intrastate.

The order of the commission is alleged to be void because of lack of power in the commission, and because to enforce the order would be a violation of the fourth amendment to the Constitution of the United States, prohibiting unreasonable searches or seizures, and because the information sought by the inquiries is a property right, and because to enforce the order of the commission would be to take

the property of the transit company without compensation and without due process of law.

The relief prayed for is an interlocutory order suspending the order of the commission and restraining that body from taking any steps to enforce the order, and that upon final hearing the order of the commission should be annulled. There is a further prayer to the effect that if, however, it should be found that the commission had authority to require an answer to any of the questions contained in the report No. 10, referred to, upon final hearing the court would enter an order specifically designating such questions in said report as the commission could lawfully require to be answered, and that the commission be restrained from attempting to enforce answers to any questions not included in the designation made by the court.

155 The commission interposed a demurrer, based upon the ground that the bill failed to state any equity. The Circuit Court for the Northern District of Illinois, Eastern Division, upon December 31, 1910, stayed the order of the commission until the further order of the court.

After the opening of the United States Commerce Court, and pursuant to section 6 of the act to create the said court, the case was transferred, and is now here to be proceeded with as may be proper.

By leave had the United States has intervened and filed an answer, admitting the allegations of fact contained in the bill, but setting forth that the requirements made by the orders of the commission do not make distinction between the books which petitioner might keep and its method of accounting for its income and expenses in connection with its interstate business and its port-to-port business, as separate from its business as a result of its joint rail and water routes, because (1) while the income from each of the different kinds of business stated in the bill can be ascertained with reasonable accuracy, yet it is impossible to determine with any substantial degree of accuracy the expenses incurred in either of them, as separate and distinct from those incurred in the others, and (2) because it is essential that the commission be informed as to the total income derived by the transit company, in order that the commission might determine what are reasonable and just rates to be charged by
156 petitioner in its joint rail and water business, and to determine whether it complies with the provisions of the law regulating interstate commerce.

The United States also sets up that the system of bookkeeping devised by the commission is the result of long experience and well adapted to the preservation of data for the information of the commission, and that in the absence of a method prescribed by the commission a carrier might manipulate its books and reports in a way to conceal rather than to reveal the true state of its business, and that it is of vital importance to the commission to have the information called for in the order in order that it may perform its duties as provided by the terms of the act to regulate commerce.

No. 22.

This suit was brought in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

The Goodrich Transit Co., the same corporation referred to in case No. 21, after alleging substantially the same matters with respect to its incorporation and business as it had set forth in the averments in the bill filed in case No. 21, alleges that on May 31, 1910, the Interstate Commerce Commission, acting under the authority claimed under section 20 of the act to regulate commerce, approved June 16, 1906, entered two certain orders relating to the subject of a uniform system of accounts to be prescribed for and kept by carriers by water. One of the orders prescribed that the classification of
157 operating revenue of such carriers and the text pertaining thereto, prepared under the direction of the commission, should govern in the keeping and recording of operating revenue accounts, and that the rules contained in what was known as the first issue of the classification of operating revenues of carriers by water should apply to the keeping and recording of such operating accounts, and that it should be unlawful for any such water carrier or for any person directly in charge of the accounts of such carrier to keep any account or record or memorandum of any operating revenue items except in the manner and form as set forth and prescribed, and except as authorized by the commission.

It was further ordered that any such carrier might subdivide any primary account in the first issue as might be required for the purposes of such carrier, or might make any assignment of the amount credited to any such primary account of operating divisions to its individual lines or estates, provided that a list of such subprimary accounts set up or such assignments made by any such carrier should be first filed in the office of the commission. The order also provided that the carrier, in addition to the operating revenue accounts prescribed by the commission, might keep any temporary or experimental accounts, the purpose of which should be to develop the efficiency of operation, but that such temporary or experimental accounts
158 should not impair the integrity of any general or primary account prescribed by the order of the commission. January 1, 1911, was the date upon which the order was to become effective.

The other order made was with respect to the classification of operating expenses of carriers by water. Classification was to be made pursuant to rules prescribed by the commission and embodied in a printed form known as the first issue. It was ordered that the classification of operating expenses as prescribed should govern in keeping and recording operating-expense accounts, and that the rules prescribed should be those according to which the operating expenses are defined; and the carriers were required to conform to the rules, and it was made unlawful for carriers to keep any accounts or records or memoranda of any operating-expense item except as set

forth and prescribed in the manner and form laid down in the pamphlet called the first issue. The carriers were authorized to subdivide any primary accounts as might be required for the purposes of such carrier, or might make certain assignments of the amount charged to such primary account, provided that a list of such subprimary accounts or assignments should be first filed with the commission. Authority was also given to the carrier to keep any temporary or experimental accounts, the purpose of which was to develop the efficiency of operation, but such temporary or experimental accounts were not to impair the integrity of any general or primary accounts as prescribed by the commission, and such temporary or experimental accounts were required to be open 159 for inspection by the commission. The date upon which this order was to be effective was January 1, 1911.

The petitioner alleges that two pamphlets, one entitled "The classification of operating revenues of carriers by order as prescribed by the Interstate Commerce Commission," etc., and the other of which was entitled "The classification of operating expenses of carriers by water, as prescribed by the Interstate Commerce Commission," etc., were served upon it, and it is alleged that the bookkeeping methods prescribed by the order of the commission differ widely from those used by petitioner, and that in order to comply with the requirements of the commission, petitioner will have to open a completely new set of books and change its methods of accounting, all of which would entail annoyance and expense.

It is averred that the commission has notified the petitioner that, beginning with January 1, 1911, a new set of books must be opened, which must conform to the methods prescribed with respect to all of its business, including its intrastate business, its port-to-port interstate business, and its business as a part of joint routes with rail carriers, and that in the event of a failure to conform its books and methods of accounting to the requirements prescribed, it will be subject to the penalties prescribed in section 20 of the act to regulate commerce.

Petitioner avers that the requirements make no distinction 160 between the books which petitioner may keep and its method of accounting for its income and expenses in connection with its intrastate business, its port-to-port business, and the business which is transacted by petitioner as the result of the joint rail and water routes to which the petitioner has become voluntarily a party. It is averred that the act to regulate commerce, as amended in June, 1906, conferred upon the commission the same authority that it now claims to exercise with respect to the books and accounts of water carriers generally, and that though petitioner and other water carriers have voluntarily agreed with some interstate carriers by railroad to establish a limited number of through routes over which passengers or property have been transported by a continuous carriage, and have filed tariffs therefor with the Interstate Commerce Commission, yet the commission never before has claimed that petitioner or other

water carriers subjected themselves to all of the provisions of the act to regulate commerce or the provisions of section 20 thereof.

It is alleged that under the Constitution of the United States no power was conferred upon Congress to regulate in any method whatsoever the internal affairs of any corporation organized under the laws of a State, and that no power was conferred upon Congress to delegate to the commission the right to regulate in any method whatsoever the internal affairs of any corporation organized under the laws of a State, and that no power was conferred upon Congress to regulate any commerce which is wholly intrastate, and that Congress did not confer upon the commission the right to regulate all or any part of the business of petitioner which was solely port-to-port business, either interstate or intrastate, and that the commission is without power to prescribe the bookkeeping methods of petitioner with respect either to its intrastate business or its port-to-port business.

Petitioner, while denying that either the Congress or the commission has any authority over the bookkeeping methods of petitioner with respect either to its income or its disbursements, avers that such jurisdiction, if any, as the commission has over the bookkeeping methods of petitioner is limited solely to bookkeeping methods with respect to the income and disbursements of petitioner in connection with its joint rail and water business, and that the methods prescribed by the commission are not reasonably adapted to the purpose of furnishing to the commission any information with respect to the revenue or disbursements of petitioner relating to its joint rail and water business.

It is also alleged that the methods prescribed would not enable the commission to pass upon the justness or fairness of any existing or proposed rate, classification, or practice of petitioner in connection with its joint rail and water business, or in connection with the existence or establishment of any through route, joint classification, or division of receipts upon such joint rail and water business.

It is further averred that it is possible to establish a method of bookkeeping by means of which the income and disbursements from the joint rail and water business of petitioner would be segregated, and that by the methods prescribed in the orders provision is not made for the segregation of the joint rail and water business from the petitioner's port-to-port business or intrastate business.

It is also averred that the right of the petitioner to keep its books in a way which shall seem to it appropriate is a property right, and that the deprivation of such right is a violation of the fifth amendment to the Constitution of the United States.

It is alleged that the orders as made are not regulations of interstate commerce, and that if section 20 of the act to regulate commerce is construed as it has been by the commission it will be the taking of petitioner's property without compensation and without due process of law.

The prayer is that a temporary order may be entered, suspending the orders of the commission, and restraining the commission from taking any steps to enforce the orders, and that upon final hearing decree may be entered annulling and suspending the said orders and enjoining the commission from taking any steps toward the enforcement of said orders. A further prayer is that if, in the judgment of the court, the orders of the commission are lawful in any respect, the court shall say what requirements petitioner shall be obliged
 163 to live up to, and that injunction be issued restraining the commission from enforcing the order with respect to any matters not lawfully included within the order of the court.

The commission demurred to the petition, the demurrer being based upon the ground that the bill failed to state any equity and that the allegations did not show that the legislative department of the Government was without authority to grant the power exercised by the commission in making the orders of May 31, 1910, and that the petition does not show that there is any violation of any constitutional or other right of the petitioner.

The United States filed an answer, admitting every allegation of fact contained in the petition, except as follows: It admits that while no distinction has been made between petitioner's income and expenses in connection with its interstate business and intrastate business, such distinction was not made because while the income from the different kinds of business stated in the petition can with reasonable accuracy be ascertained, yet it is impossible to determine with any substantial degree of accuracy the expenses incurred in either of said kinds of business as separate and distinct from the others, and because it is essential that the commission know the total income derived by petitioner from all its investments and sources, in order that the commission may determine what are reasonable and just rates to be charged
 164 by petitioner in its joint rail and water business and to determine whether it is complying with the provisions regulating interstate commerce. The answer, while expressly admitting allegations of fact contained in the petition, does not admit but denies inferences of fact from particular facts alleged and conclusions of law insisted upon in the petition.

The Circuit Court of the Northern District of Illinois stayed the order of the commission, and the case, like No. 21, was thereafter transferred to this court.

NO. 23 AND NO. 24.

These are petitions filed originally in this court by the White Star Line against the United States, wherein petitioner attacks the validity of the same orders specified in the two preceding cases, and seeks to restrain their enforcement. The allegations of the petitions are very similar to those already set forth in the petitions of the Goodrich Transit Co. It is averred herein, however, that the White Star Line, in addition to its transportation business, owns two amusements

parks, both situated within the State of Michigan; that in connection with the said parks it owns, operates, and derives revenue from lunch stands, merry-go-rounds, bowlings alleys, bathhouses, souvenir stands, photograph stands, boat liveries, and launch ferries, and that admission fees are collected from people who enter said amusement parks. The petitioner alleges that the commission had no power to regulate the books or to demand the reports which were kept 165 with respect to the conduct of its amusement parks, the business of keeping said parks being separate and distinct from the transportation business of the petitioner.

It appears that the White Star Line owns and operates steamers which run from Toledo, Ohio, through Lake Erie, Detroit River, Lake Sinclair, and Sinclair River to Port Huron, in Michigan. The steamers stop to load and unload passengers and freight at many points in the State of Michigan and in the Dominion of Canada, between Toledo and Port Huron. The transportation is entirely by water and unconnected with any land transportation whatever, but it is alleged that the petitioner has voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried under joint tariffs, and that for the purpose of establishing such through routes it has voluntarily filed with the commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers, and that the steamers of the petitioner carry for hire passengers and freight under said joint tariffs over the water portion of said through routes.

The orders of the commission, as in the cases Nos. 21 and 22, relate to the making of reports to the commission and to the keeping of uniform accounts, as required by the rules laid down by the commission, and to which reference has already been made in the 166 statement of the two preceding cases.

The petitioner in these cases, as in the preceding ones, avers that the commission caused to be served upon it two pamphlets, one entitled "The classification of operating revenues by carriers by water" and the other entitled "The classification of operating expenses of carriers by water." It is alleged that the bookkeeping methods prescribed by the commission differ from those used by the petitioner, and that in order to comply with the order of the commission petitioner would have to open a completely new set of books and change its methods of accounting.

It is also alleged that the requirements include the business of petitioner relating to its amusement parks, its intrastate business, its port-to-port intrastate and international business, and its business as a part of joint routes with rail carriers. Petitioner denies the authority of the commission to make any such orders, and for reasons substantially similar to those relied upon in the bills filed by the Goodrich Transit Co., already referred to, pleads lack of power in the commission and assails the constitutionality of the orders.

The United States filed answers to the petitions, admitting the allegations of fact contained in the petitions, but alleging that the

167 parks and things connected with the parks constitute a part of the petitioner's general property and are operated in connection with and for the purpose of promoting its interstate business.

The answers also set up that the method of bookkeeping prescribed by the commission is reasonable and just, and that it is impossible to determine what are reasonable and just rates to be charged by petitioner in its joint rail and water business unless a method of bookkeeping such as is prescribed is put into use.

The Interstate Commerce Commission filed motions to dismiss the several petitions upon the ground that the facts stated therein did not entitle petitioner to any relief.

The four cases were argued together, upon an understanding between counsel for the respective parties that the essential questions were presented by the demurrers and motions to dismiss. The cases were, therefore, heard as upon general demurrers and motions, and without regard to the answers filed by the United States.

This statement is sufficient to an understanding of the cases, and although there are separate records, we shall treat them as if they were but one proceeding before the court.

The commission made its call for the reports and its orders prescribing uniformity of accounts, which are objected to by the carriers, under what it claims is authority conferred by section 20 of the act to regulate commerce. The section is appended.¹ Acting

¹ Sec. 20. (As amended June 29, 1906, February 25, 1909, and June 18, 1910.) That the commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, and from the owners of all railroads engaged in interstate commerce as defined in this act; to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific

168 under its terms the commission in detail has prescribed classi-
 169 fication of operating expenses and revenue accounts for the use
 170 of carriers by water and has prescribed that the accounts for
 the entire operations of such carriers shall be kept according
 to a uniform system laid out by definite rules of the com-
 mission.

In the classification as prescribed for the report, operating expenses are divided into certain general accounts, such as maintenance, traffic expenses, operation of vessels and terminals, incidental transportation expenses, general expenses, and charter expenses. Under these several heads accounts of expenditures are required to be divided into groups and the groups in turn are divided into primary detailed accounts. For example, the report of traffic expenses calls for accounts of superintendence, advertising, fast freight lines, outside agencies, traffic associations, and other traffic expenses. Expenditures chargeable to transportation expenses are required to be divided into

answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. The commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, and it may employ special agents or examiners, who shall have authority under the order of the commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers or carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those pre-

general groups under the headings: "Operation of vessels," "Operation of terminals," and "Incidental transportation expenses." Primary accounts which go to make up the items under the general heading are called for with specific detail, to the end that classifications of operating expenses for carriers by water may be presented by an account of the entire transactions of the carrier whose business is being inquired into. The classification of operating revenues is equally specific, requiring accounts of revenue from transportation, revenue from operations other than transportation, and charter revenue. Primary accounts must be kept and made of passenger, baggage, mail, express revenue, and miscellaneous receipts, including, among many other things, wharf, demurrage, storage, and other receipts.

Interrogatories also call for exact information as to the amount of capital stock issued, dividends paid, surplus funds if any, funded and floating debt and interest thereon; cost and value of the car-

scribed or approved by the commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: Provided, That the commission may, in its discretion, issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the commission, or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States, at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of said act to regulate commerce or of any act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said acts, or any of them.

And to carry out and give effect to the provisions of said acts, or any of them, the commission is hereby authorized to employ special agents or examiners, who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

riers' property, franchises, and equipments; earnings and receipts from each branch of business, and from all sources; operating and other expenses; complete exhibits of financial operations, as well as other complete statements necessary to exhibit the carriers' financial condition and results from operation of their entire business.

In the text of classification of operating revenues in the "first issue" pamphlet, particularly referred to in the petition filed in case No. 22, the carrier is called upon to keep an account of its freight revenue, passenger revenue, excess baggage, and other
 172 passenger revenues, together with mail, express, special service, miscellaneous transportation revenues, freight operations other than transportation, rentals of buildings, and miscellaneous receipts. In the classification of operating expenses, the orders require accounts of superintendence, repairs of vessels, renewals, repairs of tugs and lighters, accounts of shop machinery and tools, maintenance of equipment, maintenance of terminals, expenses of docks, wharves, buildings, and fixtures; traffic expenses, transportation expenses, wages of crews, fuel, food supplies, operation of terminals, salaries of agents, clerks, and attendants, stevedore and wharf-laborer accounts, freight losses and damages, accounts of damage to property, salaries and expenses of general officers, law expenses, insurance, charter expenses, including rent, maintenance, and operation accounts for hire or rent of vessels, and other matters.

No attempt is made in the orders making classifications of accounts, and laying down forms, to separate revenues or expenses of operations on traffic which is interstate from that which is intrastate, the object being to require a report of and to prescribe accounting rules for the entire business of any carrier that is subject, with respect to any of its traffic, to the provisions of the act.

So, without further particularization of the many items of information called for by the questions which are submitted to the carrier in the report, and without examining more closely into the precise methods of the system adopted to secure uniformity
 173 of accounts therein, we may put the fundamental question of law presented in this way: What authority, if any, has the commission over water carriers situated as are these now before the court?

At the outset we recognize the force of the suggestion made by petitioners that for a great many years the regulation of commerce on the ocean and other navigable waters, including the regulation of water carriers, has been provided for by laws especially adapted to that particular subject. Thus it was enacted that the liability of owners of vessels for the loss or destruction of property, goods, or merchandise, done, occasioned, or incurred without the privity or knowledge of the owner, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending (Rev. Stat., sec. 4283); and by act of June 26, 1884, amending section 4283, the individual liability of a shipowner is limited to the proportion of any or all debts and liabilities that his individual share

of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending. Again, by section 3 of the act of Congress approved February 13, 1893 (27 Stat. L., 446), it is provided that:

" * * * if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects
 174 seaworthy and properly manned, equipped, and supplied,
 neither the vessel, her owner or owners, agent, or charterers,
 shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel * * * "

And in 1873 Congress passed an act which prohibited railways forming part of an interstate line and vessels transporting cattle and other animals from State to State from confining the same in cars, boats, or vessels for more than twenty-eight hours consecutively without releasing the same for water, rest, and feeding for at least five consecutive hours. (Rev. Stat., sec. 4386.)

But while these statutory provisions, in so far as they go, are a regulation of commerce and carriage by water and of the limitations upon vessel owners' liabilities passed by Congress under its general power to regulate commerce (*Providence & New York Steamship Co. v. Hill Manufacturing Co.*, 109 U. S., 578; *Lord v. Steamship Company*, 102 U. S., 541), still they do not attempt to control rates, fares, or charges relating to such transportation. And, so far as we are advised, not until April, 1887, the time when the act to regulate commerce became effective, did Congress make reference to the regulation of rates. Upon this assumption we may refer briefly to the history and scope of the act to regulate commerce to see whether Congress, in establishing a system by which interstate transportation should be regulated, included water carriers and charges for
 175 service and accounting by water carriers. It is well here to note that by the amendments of the act to regulate commerce passed June 18, 1910, the Interstate Commerce Commission was expressly denied the right to establish any route classification, rate, fare, or charge when the transportation is wholly by water, and that any transportation by water affected by the act to regulate commerce should be subject to the laws and regulations applicable to transportation by water.

Although courts may not refer to the debates in Congress to enable them to discover the meaning of the language of an act of Congress, nevertheless it is proper for them to review the proceedings connected with the passage of a law through the legislative houses, in order to get at the correct interpretation of the text used. (*United States v. Trans-Missouri Freight Association*, 166 U. S., 290.)

The initial legislative step taken to secure a law regulating carriers was the adoption of a resolution on March 17, 1885, authorizing the President of the Senate to appoint a committee to investigate

into and report upon the subject of "the regulation of transportation by railroad and water routes, in connection or competition with said railroads, of freight and passengers between the several States, etc." On January 18, 1886, the committee made an exhaustive report wherein were pointed out the then existing evils in railroad operation, together with possible remedies therefor, and a bill was recommended for passage. In the report special emphasis was laid upon the influence of water routes as beneficially regulating charges made upon all other means of transit, the conclusion of the committee being that in order "to secure the blessings of cheap transportation and to hold our place among the nations of the earth, we must develop our natural waterways to their fullest capacity and give the benefits of lake, river, and canal communication to the people of all the States as far as practicable." The law as approved February 4, 1887, to be effective April 5, 1887, contained the following paragraph, numbered 1:

" * * * That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

Amendments to this section made in June, 1906, removed doubt as to what constituted the test of jurisdiction by changing the punctuation so as to make the provisions of the act apply to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory," etc. The effect of the parentheses was to make the words "common control, management, or arrangement" applicable only to transportation which is partly by railroad and partly by water. We do not regard the change as of special importance to this case further than that it shows that Congress consistently meant to keep within the transportation over which it would exercise a measure of

control, to wit, not alone interstate traffic by all-rail route, but interstate traffic in part by water when used in connection with rail under a common control, management, or arrangement for a continuous carriage or shipment.

178 It is undoubtedly true that in the exercise of its power over interstate commerce the principal moving thought of Congress was to regulate railroad corporations. Commonly known practices of unjust discrimination in various forms by railroads had led to many evils, which owing to the restricted powers of the States could only be effectively dealt with through general law. The decision of the Supreme Court in *Wabash, St. Louis and Pacific Railway Co. v. Illinois* (118 U. S., 557), rendered in October, 1886, to the effect that a statute of a State attempting to regulate or to impose any restriction upon the transmission of persons or property from one State to another is not within the class of legislation which the States may enact in the absence of legislation by Congress, and that such a statute is void even as to that part of such transmission which may be within the State, reversing the decision of the Supreme Court of Illinois, helped to draw public attention to the situation and quickened the demand for congressional action.

Mentioning the causes which led to action by Congress, the Supreme Court, in *Texas and Pacific Railway Co. v. Interstate Commerce Commission* (162 U. S., 197, 210), said:

“ * * * They chiefly grew out of the use of railroads as the principal modern instrumentality of commerce. While shippers of merchandise are under no legal necessity to use railroads, they are so practically. The demand for speedy and prompt movement virtually forbids the employment of slow and old-fashioned methods of transportation, at least in the case of the more valuable articles of traffic. At the same time, the immense outlay of money required to build and maintain railroads, and the necessity of resorting, in securing the rights of way, to the power of eminent domain, in effect disable individual merchants and shippers from themselves providing such means of carriage. From the very nature of the case, therefore, railroads are monopolies, and the evils that usually accompany monopolies soon began to show themselves and were the cause of loud complaints. The companies owning the railroads were charged, and sometimes truthfully, with making unjust discriminations between shippers and localities, with making secret agreements with some to the detriment of other patrons, and with making pools or combinations with each other, leading to oppression of entire communities.

“ Some of these mischiefs were partially remedied by special provisions inserted in the charters of the companies and by general enactments by the several States, such as clauses restricting the rates of toll, and forbidding railroad companies from becoming concerned in the sale or production of articles carried, and from making unjust preferences. Relief to some extent was likewise found in the action of the courts in enforcing the principles of the common law applicable

to common carriers—particularly that one which requires uniformity of treatment in like conditions of service.

“As, however, the powers of the States were restricted to
180 their own territories, and did not enable them to efficiently
control the management of great corporations whose roads
extend through the entire country, there was a general demand that
Congress, in the exercise of its plenary power over the subject of
foreign and interstate commerce, should deal with the evils com-
plained of by a general enactment, and the statute in question was
the result.”

On the other hand, as has been pointed out by the Supreme Court,
in referring to the act to regulate commerce, the purpose of Congress
was to embrace the whole range of interstate commerce, and this is
made apparent by the exclusion only of domestic commerce in the
last clause of the first paragraph of section 1, and in the declaration
of the scope and purpose of the act announced in the title. (*Armour
Packing Co. v. United States*, and other cases, 209 U. S., 56.) Now,
of course, steamers which undertake for hire to transport the goods
of those who may choose to employ them from place to place are car-
riers (*Niagara et als. v. Cordes*, 21 How., 7); and undoubtedly when-
ever as carriers they enter upon the transportation of freight or pas-
sengers and are used under a common arrangement with a railroad
for a continuous carriage of passengers or property from one State
to another State they are brought within the purview of the first sec-
tion of the act.

As there is involved in the opinion just expressed construction of
the words “when both are used under a common control, man-
181 agement, or arrangement for a continuous carriage,” etc., it is
appropriate to consider them for a moment. It is apparent
that by failure in terms to include them, water carriers doing business
as are the steamers belonging to petitioners herein, are not directly
in any way subject to the act unless their connection with railroads
and their uses under certain arrangement with railroads make them
so; that is to say, water carriers situated as are these petitioners are
exempt from the provisions of the act in respect to their intrastate
port-to-port business and their interstate port-to-port business. In-
deed, there is no real contention otherwise, and it would therefore
follow that the commission has no control over any business done by
these petitioners except such interstate traffic as is carried on under
a joint arrangement between them and rail carriers.

But we were told upon the argument that through bills of lading
covering part railroad and part water transportation under joint
tariffs are issued by the petitioners. Moreover, under the pleadings
we must take it as a fact that for the purpose of establishing certain
through routes petitioners have filed with the Interstate Commerce
Commission their joint tariffs or their concurrence in tariffs filed by the
railroad companies, and that the petitioners' steamers carry for hire
passengers and freight under said joint tariffs over the water
182 portion of the through routes. These things being true, we

find it impossible to escape from the conclusion that there is engagement in transportation in so far as both water and rail are used to carry from one State to another, and there is a common arrangement made as described for a continuous shipment of passengers and freight whereby petitioners have brought themselves within the terms of the act and are subject to such of its provisions as are applicable to carriers under such arrangement.

Let us see what the practical view of the commission has been where the subject of use and arrangement has been adverted to.

In the matter of joint water and rail lines (2 I. C. C. R., 645, 646-647) the commission observed:

" * * * that carriers by water are not in terms brought under the regulation of the act to which carriers by rail are subject except 'when both are used under a common control, management, or arrangement for a continuous carriage or shipment,' etc. If the carriers by water see fit to operate independently, no authority is conferred upon the commission to compel them to do otherwise, and the understanding of the commission is that by the act to regulate commerce the carriers by rail are also left at liberty to act independently. They can not decline to receive from or deliver freight to connecting water lines; but, at the same time, they are not required by law to make with the water lines joint rates, though they should be expected to do so when they can thereby subserve the interest of the public without detriment to their own interest. * * *"

183 In the third annual report of the commission the relation of lake and rail transportation received careful consideration (3 I. C. C. R., 289-381). It was commented upon that the act was only applicable to water transportation when used under a common control, management, or arrangement for a continuous carriage or shipment in connection with a railroad and as part of a line or route of which another part is a railroad; and that carriers engaged in transportation wholly by water were independent of regulation. The commission deplored such a condition. Special reference was made to traffic upon railroads from the Lakes to the Atlantic coast where the boats were used in connection with a rate under a common control or management for continuous carriage from Chicago, Duluth, and other western Lake ports to tidewater at New York, Philadelphia, and other eastern cities. It was stated by the commission that such carriers on lake and rail were made subject to the act and were required to publish their rates and charges together with proposed increases or reductions.

In the case of *The Railroad Commission of Florida v. The Savannah, Florida & Western Railway Co. et als.* (5 I. C. C. R., 13), a question involved was whether some of the defendant steamship companies and a certain railroad company were common carriers engaged in interstate commerce and subject to the jurisdiction of the commission. It was held that while the steamship companies constituted all-water lines, inasmuch as they were each engaged in connection with the railroads in the transportation of oranges from

points in Florida to northeastern cities under through bills of lading, and inasmuch as they joined in the action of the various railroads and steamship lines in advancing certain rates under investigation, under the act and the former decisions of the commission the companies were carriers of interstate commerce and subject to the jurisdiction of the commission in respect thereto.

In the matter of Jurisdiction over water carriers (15 I. C. C. R., 205), the commission again had occasion to give consideration to the question, which was stated in this way:

* * * "Does the fact that a water carrier joins with a rail carrier in forming a through route or establishing a joint rate for the transportation of certain traffic subject all the interstate traffic of such water carrier to the requirements of the act and the jurisdiction of the commission; or, stated in a narrower form, does such action on the part of a water carrier subject its port-to-port traffic to all the provisions of the act, including the posting and observing of tariffs and similar requirements?"

The language of section 1 of the act, as we have heretofore quoted it, was carefully examined, and it was held that while interstate commerce wholly by railroad was subject to the act, interstate commerce wholly by water was not; yet it was said: "It is equally obvious
185 that interstate commerce partly by railroad and partly by water, under a common control, management, or arrangement for a continuous carriage or shipment, is subject to the act." The commission then proceeded to determine whether under conditions where some of the commerce transported by a carrier is subject to the act all the commerce transported by such carrier was also within the act; and the view taken was that the statute is only applicable to a common carrier or carriers engaged in transportation partly by rail and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment. Judge Knapp, then chairman of the Interstate Commerce Commission, said: "The use of the word 'when' is significant, and its natural meaning seems to be that a water carrier is subject to the act 'in so far as' or 'to such extent as' it carries traffic under a common control, management, or arrangement with a railroad." Regulation of charges exacted upon the port to port business of water carriers was held not to be authorized, and reasons were pointed out why any other construction was unreasonable. For example, it was observed that if one water carrier, by becoming a party to a joint rate with a railroad, was thereby required to publish and adhere to its rates between ports it could not hope to compete with a carrier not required
186 to publish and maintain its rates, which would bring about a result whereby the law, instead of promoting and facilitating commerce, would tend rather to its injury by making unprofitable the instrumentalities provided for the carriage of that commerce. It was shown that under such a construction of the law there might be two water carriers between the same ports attempting to secure the transportation of competitive traffic, one of which would

be bound to observe and collect rates which it had published thirty days in advance, while the other could make any rate which would secure the traffic. Nevertheless water carriers were held to be subject to the law as to such interstate traffic as is transported under a common control, management, or arrangement with a rail carrier.

Judicial construction accords with these views. In *Ex parte Koehler, Receiver, etc.* (30 Fed., 867), decided in April, 1887, though the facts were unlike those before us, the court in its discussion of the interstate commerce act thought that it did not apply to all of the agencies or instrumentalities used or engaged in interstate commerce; that it did not include any water craft unless used in connection with the railways under a common control, management, or arrangement for a continuous carriage or shipment, etc., and said:

"The mere fact that a railway wholly within a State and a vessel running between said State and another meet at a point within the railway State and thus form a continuous line of transportation between the two States by the one taking up the goods delivered by the other at its terminus and carrying them thence to their destination, does not bring the carriers who so use the railway and steamer within the act. So long as the railway and steamer are each operated under a separate and distinct control, making its own rates and only liable for the carriage and safe delivery of the goods at the end of its own route, the act does not apply to the transaction. To make these carriers subject to the act the railway and vessel must, as therein provided, be operated or used under a 'common control'—a control to which each is alike subject, and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one."

A fair implication from this language is that where there is an arrangement and a use by both water and rail carrier under an arrangement by bill of lading given for carriage over both routes the carriers are within the act.

In *United States v. Wood et al.* (145 Fed., 405) the court held that the test of subjection to the act was through routine in interstate commerce, and that when one carrier united with one or more in making a rate for interstate traffic and issued a through bill therefor it became subject to the act, and that the successive receipt and forwarding in the ordinary course of business by two or more carriers in interstate traffic under through bills, or under any arrangement for continuous carriage over their lines, constituted assent to such common arrangement for the carriage within the meaning of the act. (See also *United States v. Camden Iron Works*, 150 Fed., 214.)

In *United States v. Colorado & N. W. R. Co.* (157 Fed., 321) the Court of Appeals of the Eighth Circuit adverted to the applicability of the act to carriers partly by water and partly by railroad operating under a common control, management, or arrangement, and referred to the amendatory act of June 29, 1906, as governing common car-

riers engaged in interstate commerce wholly by railroad, even though they are exempt from any common control, management, or arrangement with other carriers.

Going to the highest authority we find like general construction and definition of what will be looked upon as a common arrangement.

In *Cincinnati, New Orleans and Texas Pacific Railway Co. v. Interstate Commerce Commission*, and *Interstate Commerce Commission v. Cincinnati, New Orleans and Texas Pacific Railway Co.* (162 U. S., 184), it was said:

"* * * But when the Georgia Railroad Company enters into the carriage of foreign freight, by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but made by an arrangement for the continuous carriage or shipment
189 from one State to another, and thus becomes amenable to the

Federal act, in respect to such interstate commerce. We do not perceive that the Georgia Railroad Company escaped from the supervision of the commission by requesting the foreign companies not to name or fix any rates for that part of the transportation which took place in the State of Georgia when the goods were shipped to local points on its road. It still left its arrangement to stand with respect to its terminus at Augusta and to other designated points. Having elected to enter into the carriage of interstate freights and thus subjected itself to the control of the Commission, it would not be competent for the company to limit that control, in respect to foreign traffic, to certain points on its road and exclude other points.

"* * * All we wish to be understood to hold is, that when goods shipped under a through bill of lading, from a point in one State to a point in another, are received in transit by a State common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. When we speak of a through bill of lading we are referring to the usual method in use by connecting companies, and must not be understood to imply that a common control, management, or arrangement might not be otherwise manifested."

The principle of this last case is to be invoked because the
190 petitioning water carriers before us ship goods under through bills of lading from points in one State to points in another under traffic arrangements with railroads for continuous carriage or shipment. They have thus chosen to make an arrangement, presumably according to the usual method in use by connecting carrying companies, and so have subjected their boats in respect to such interstate carriage to the control vested in the commission, and are carriers subject to the act.

The learned counsel for the petitioners admitted upon the argument that the two carriers, rail and water, could not disregard the

long and short haul provision of section 4 of the act under circumstances where an all-rail carrier could not; but his suggestion was that a reasonable interpretation of the law might be that inasmuch as railroads are subject to the act, and inasmuch as a rail carrier can do nothing by itself or with another railroad or with a water carrier which can not be reached by act of Congress, the remedy for a violation of the law in respect to traffic carried by water carrier under common arrangement, except as to rebates, may be found by dealing with the rail carrier only, and which alone may be liable. This argument must needs find support in some construction of the text whereby water carriers are exempted, even though operating in

interstate traffic under an arrangement with a railroad for a continuous shipment. It therefore involves limiting the term "common carrier" embraced in section 1 to railroads entering into arrangements with water carriers, and so confines authority conferred by section 20 to inquiry into the carriage concerns of the railroad only. The words of the statute, however, do not so restrict the common arrangements for use. They include any common carrier or carriers engaged in transportation of passengers or property partly by railroad and partly by water, and thus have that broader scope which the commission has time and again regarded them as having; and which upon careful examination we believe to be in accord with the spirit as well as the letter of the law.

Regarding the petitioners, therefore, as subject to control, we nevertheless must not overlook limitations which are incidental to the subjection as well as to the regulating power.

As we have already seen, the subjection is at once restricted for the reason that the intrastate port to port business and the interstate port to port business of the petitioners are outside the purview of the act of Congress; so we can advance to a consideration of whether or not the regulating power is limited by section 20.

The contention of the Government here is that the commission is authorized to call for full reports of the entire business of these petitioners, intrastate as well as interstate, while petitioners say that no such authority is given or could be given.

The broad object of section 20 evidently was to clothe the commission with authority to call for any and all information which would enable the commission to act intelligently in the lawful exercise of its delegated power of rate regulation. Of course, without some precise knowledge of traffic conditions and of interstate business, the reasonableness of rates and fares relating to such business would be impossible of determination. But Congress has expressly restricted the authority to call for reports and to prescribe the form of such reports to common carriers subject to the provisions of the act. It is impossible to read section 20 as independent of section 1 imposing this limitation. And inasmuch as the act has only to do with interstate commerce and carriers engaged in interstate commerce, only such carriers can be included within those which must respond to the calls for information and comply with the require-

ments of the commission in matters of accounting. This being true, inasmuch as the reports of affairs, accounts, finances, and like things of the carriers are evidence for the ascertainment of facts relating to the interstate business, which alone is the proper subject of regulation, the scope of the right to call for the report is confined by the nature of the business to be set forth within the report when made. As a correlative proposition, the obligation upon the carrier, subject to the provisions of the act, is to report such business as is interstate and not exempt, and under section 20 there is no obligation upon it to report other business.

Furthermore, the act only confers the right to prescribe how accounts of business properly the subject of regulation shall be kept, and no duty rests upon the carrier to obey orders prescribing methods or forms of accounting except for such business. It is said by the Government, however, that, conceding lack of power to regulate any commerce except that which is carried on under common arrangement, nevertheless the interstate and intrastate operations of these water carriers, petitioners, are so commingled that it is impractical to obtain information of the interstate traffic without full knowledge of the intrastate concerns. The answer to these suggestions is in the text of the law, which expresses the mind of Congress and limits all authority to the regulation of carriers subject to the provisions of the act, and which, in this case, are those engaged in transportation of a particular nature; that is to say, interstate, partly by rail and partly by water, used under a common arrangement as already defined.

We recognize that section 20 relates to reports by carriers rather than to the carriage itself, but the power to call for the information in the report is circumscribed by the relation of the report to the thing itself, interstate traffic. A like rule must govern with respect to bookkeeping and accounting methods. The commission, in the exercise of the power to establish a uniform system of accounting, can only lay down forms and rules which relate to the subject itself, interstate traffic not exempt.

It may be that difficulties will arise which will make it hard for the commission to confine its inquiries into interstate business done under arrangement with the rail carrier and to prescribe systems of keeping books and accounts without impinging upon matters which are intrastate exclusively, and it may be a somewhat tedious work for the carrier to furnish this information and to follow the system of accounting; but as Congress has seen fit to exercise its authority with respect to that which is interstate, mere perplexities of framing the interrogatories or of accounting, or recording the evidences of such transactions, can not be urged as a reason for refusing to sustain the power conferred. Nor does it seem logical to say that if the business is so far separable as to furnish a basis for a common arrangement as to part of it that report and systematic account of such part can not be had without report of the whole.

It is fitting at this point to repeat that the reports and the methods and forms contemplated under section 20 are for the information of the commission and for the simplification of furnishing such information. But we must not confuse such reports with information sought under an investigation undertaken by the commission upon 195 complaint or of its own motion. In the one instance the commission calls for facts necessary to the general performance of a duty imposed upon it; in the other it exerts its power to obtain evidence necessary to enable it to decide a question involving something like an issue. The information by report being directly pertinent to the substantive subject of what is interstate commerce, and this being the proper subject of regulation, presumably will be furnished by the carrier in truthful and honest statement.

If, however, the report of the carrier is not accurate or truthful, or the information furnished is not sufficiently complete to enable the commission to perform its duty, there are ways by which investigation can be had and which, if pursued, clearly may render it proper for the commission, in its effort to get at the truth of the interstate business of the carrier, to inquire fully into its intrastate business—not with a view of exerting power over such intrastate business, but because inquiry into such business is essential in order to know the true condition of the interstate business. Such a contingency, however, is not presented upon first motion under section 20, nor does the right to obtain such necessary information carry with it the right of investigation into business not interstate and not directly connected therewith. For instance, it would seem to be relevant in the Goodrich cases to inquire into the amount of capital 196 stock, debts, value of franchises, improvements, receipts, dividends, and such other matters pertinent to the business of the corporation as Congress evidently regarded to be foundation knowledge for the commission to have; but, so far as appears in the record in cases 23 and 24, there is no necessity for going into the details of the amusement-park business carried on by the White Star Lines, for it has no relation to interstate traffic.

It is a circumstance of slight force, but deserving of mention, as in line with these observations, that nowhere in section 20 is there reference to "investigation" by the commission. "Reports" containing "information" may be required and forms of accounts, records, and memoranda may be prescribed—even inspection and examination of accounts, records, and memoranda may be had by examiners of the commission—but they are always for purposes of information.

Information of interstate traffic business and power to make the carrier report it by a uniform system of accounting are the keynotes of section 20. "Investigation," on the other hand, is the word employed in parts of section 12, authorizing depositions in proceedings before the commission; investigation is authorized where complaint is made or where questions arise as provided for by sections 13 and 15 of the act. Reports of "investigations" are to be made (sec. 14), and attorneys may be employed for proper representation of the

public interests in "investigations" made by the commission, or proceedings pending before it or in court.

197 These considerations make it reasonable to construe the power given by section 20 as one pertaining to first information, ample presumably to secure necessary facts to enable the commission to go forward, yet not broad enough in initial proceeding to warrant inquisitorial investigation into collateral affairs, which of themselves do not constitute interstate commercial traffic or are not necessarily directly interwoven therewith.

Under this view of the power conferred upon the commission by section 20, it is very clear that the authority to require the reports of interstate business where there is the use under a control as prescribed is granted. In *Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission* (decided May 29, 1911), the railroad company brought a bill to annul an order of the commission requiring the railroad company to make monthly reports showing the instances where employees subject to the act of Congress of March 4, 1907 (Chap. 2939, 34 Stat., 1415), had been on duty for a longer period than that allowed. The contention of the carrier was that the commission had no authority to require the reports called for. The Supreme Court examined section 20 of the act to regulate commerce and held that a grant of power extended to the commission in the execution of the act whereby they could order carriers to file monthly reports of earnings and expenses and to file periodical or special, or both periodical and special, reports concerning any matter about
198 which the commission is authorized or required by law to inquire or keep itself informed, or which it is required to enforce, etc., clearly embraces the power which the commission had there asserted, and authorized it "to promulgate an order requiring reports to be made." But it appears that the court limited its observations to interstate business and was careful not to construe the law as extending the power beyond the right to make the order requiring reports of such business.

From these expressions it follows that the theory of the commission in the present cases was erroneous. It acted within its authority when it made an order calling for reports of all business done by the petitioners under through bills of lading where the transportation was partly by railroad from one State to another, or from one place in the United States to Canada, an adjacent foreign country; and it was within its power when it prescribed the system of accounts and the uniform method of keeping accounts for such interstate business; and so far as the orders call for information confined to such traffic, or directly related thereto, and so far as the orders prescribe uniform systems of bookkeeping and accounting for such traffic and such as is directly related thereto, they must be sustained. But, in so far as the reports called for and the accounting rules prescribed extend beyond such interstate business of the carriers, or include matters of
199 intrastate traffic accounts and affairs and concerns exclusively, they become invasions of the rights of the carriers, and to the extent of such invasions are unlawful.

What we have said makes the conclusion of the case comparatively simple.

Petitioners are amenable to the law with respect to all interstate business done by them in connection with railroads under arrangements such as have been discussed, and the commission acted within its authority when it made orders for reports with respect to such business and prescribed forms of accounting for such business; but it went beyond its authority in calling for reports of transactions relating exclusively to "port to port" interstate business, or to intrastate traffic or affairs, and in propounding questions and prescribing bookkeeping and accounting methods in respect thereto.

A recast of the forms of reports should be made by the commission, acting in conformity with the views herein expressed. We think it advisable that the commission, rather than the court, should proceed to make the recast.

The demurrers are overruled and the motions to dismiss are denied; and the prayers of the petitioners for orders of injunction are granted. The orders issued by the commission are hereby set aside, and the matter is referred to the commission to be proceeded with as may be proper under the law as herein indicated. So ordered.

200

Order.

Filed and entered October 13, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,
v.

THE INTERSTATE COMMERCE COMMISSION, RESPONDENT,
The United States, intervening respondent. } No. 21.

GOODRICH TRANSIT COMPANY, PETITIONER,
v.

THE INTERSTATE COMMERCE COMMISSION, RESPONDENT,
The United States, intervening respondent. } No. 22.

WHITE STAR LINE, A CORPORATION, PETITIONER,
v.

THE UNITED STATES, RESPONDENT, THE INTERSTATE
Commerce Commission, intervening respondent. } No. 23.

WHITE STAR LINE, A CORPORATION, PETITIONER,
v.

THE UNITED STATES, RESPONDENT, THE INTERSTATE
Commerce Commission, intervening respondent. } No. 24.

FINAL DECREE.

These causes came on to be heard on the 17th, 18th, and 19th days of April, A. D. 1911, on the demurrer of the Interstate Commerce Commission, filed on the 30th day of December, A. D. 1910, in cases

Nos. 21 and 22, and on motion to dismiss of Interstate Commerce Commission, filed on the 21st day of March, A. D. 1911, in cases Nos. 23 and 24, and were argued by counsel, Mr. Ralph M. Shaw appearing for the petitioners, Mr. Charles W. Needham for the Interstate Commerce Commission, and Mr. J. A. Fowler for the United States, he having applied to the court for permission to participate in the argument, as the questions presented on the said demurrers and motions might be determinative of the cases, and said permission having been granted.

201 It is therefore ordered, adjudged, and decreed that the said demurrers be, and the same are hereby, overruled, and the said motions to dismiss be, and the same are hereby, denied; and it further appearing to the court and it is admitted by counsel for the United States that under the holding of the court the answers of the United States tender no material issue of fact, and as the Interstate Commerce Commission elects to stand upon the demurrers and motions filed by it, and inasmuch as the adjudication is conclusive of all questions presented, this decree is, therefore, made final, and the prayers of the petitioners for orders of injunction as prayed for in petition are granted.

It is further ordered, adjudged, and decreed that the orders dated the 31st day of May, A. D. 1910, and the 11th day of June, A. D. 1910, be, and the same are hereby, set aside.

It is further ordered, adjudged, and decreed that the matter be, and the same is hereby referred to the Interstate Commerce Commission to proceed with according to right and justice.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

202

Assignment of errors.

Filed November 11, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
v.		
INTERSTATE COMMERCE COMMISSION, RESPONDENT, AND The United States, intervener.		

ASSIGNMENT OF ERRORS.

Come now the Interstate Commerce Commission and The United States, by their counsel, and in connection with their application for appeal file the following assignment of errors on which they will rely upon said appeal to the Supreme Court of the United States

from the final order or decree of the Commerce Court, entered October 13, 1911, in the above-entitled cause.

First. The Commerce Court erred in not dismissing the amended bill for want of equity.

Second. The Commerce Court erred in holding that the Interstate Commerce Commission is not authorized by section 20 of the interstate commerce act to require petitioner to report annually any business other than that conducted partly by it and partly by railroad under a common control, management, or arrangement for a continuous carriage or shipment.

Third. The Commerce Court erred in not holding that the Interstate Commerce Commission is authorized to require annual reports from petitioner showing all matters which are specifically described in section 20 of the interstate commerce act, and in holding
203 that the scope of the report authorized by said section 20 is restricted by the provisions of section 1 of said act.

Fourth. The Commerce Court therefore erred in not sustaining the motion to dismiss the petition filed by the Interstate Commerce Commission and in granting a perpetual injunction against the enforcement of the order issued by the said commission on the 11th day of June, 1910, which order is attacked in the petition.

Wherefore the Interstate Commerce Commission and The United States pray that the said final decree of the Commerce Court, entered October 13, 1911, be reversed, annulled, and set aside, and that the said amended bill of complaint be dismissed, and for such other and further order as may be appropriate.

November 11, 1911.

CHAS. W. NEEDHAM,

Solicitor for the Interstate Commerce Commission.

GEO. W. WICKERSHAM,

Attorney General of the United States.

204

Petition for appeal.

Filed November 11, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,

v.

INTERSTATE COMMERCE COMMISSION, RESPONDENT, AND } No. 21.

The United States, intervener.

PETITION FOR APPEAL.

The Interstate Commerce Commission, respondent, and The United States, intervener, feeling themselves aggrieved by the final decree

entered in the above-entitled cause on the 13th day of October, 1911, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the Interstate Commerce Commission and The United States consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the Interstate Commerce Commission, respondent, and The United States, intervener, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

November 11, 1911.

CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.
GEO. W. WICKERSHAM,
Attorney General of the United States.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

205

Order allowing appeal.

Filed November 11, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 21.
v.	
INTERSTATE COMMERCE COMMISSION, RESPONDENT, AND The United States, intervener.	

ORDER ALLOWING APPEAL.

In the above-entitled cause, the Interstate Commerce Commission and The United States having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court, entered October 13, 1911, and having at the same time made and filed an assignment of errors, and having in all respects conformed to the statute and the rules of court in such case made and provided:

It is ordered and decreed that the said appeal be, and the same is hereby, allowed as prayed, and made returnable on the eleventh day of December, 1911. And the clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings to the Supreme Court of the United States.

November 11, 1911.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

206

Transcript of docket entries.

United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 21.
<i>vs.</i>	
THE INTERSTATE COMMERCE COMMISSION, RE- spondent. The United States, intervening respondent.	

Attorneys: John Barton Payne, Silas H. Strawn, Ralph M. Shaw, Garrard B. Winston, for petitioner; James A. Fowler, for the United States; Chas. W. Needham, for the Interstate Commerce Commission.

PROCEEDINGS.

1911.

- Mar. 6. All papers filed in U. S. Commerce Court.
- Apr. 3. Ordered that United States be permitted to intervene.
- Apr. 4. Answer of the United States, filed.
- Apr. 17. Appearance of Mr. Charles W. Needham for Interstate Commerce Commission, filed.
- Apr. 17. Amended bill of complaint, with Exhibit A attached, filed.
- Apr. 25. Brief on behalf of Interstate Commerce Commission, filed.
- May 5. Brief and argument for petitioner, filed.
- Oct. 5. Opinion, filed.
- Oct. 13. Order entered overruling demurrers, dismissing motions, and setting aside order of I. C. C.
- Nov. 11. Assignment of errors, filed.
- Nov. 11. Petition for appeal, filed.
- Nov. 11. Order allowing appeal, filed.
- Nov. 20. Citation on appeal, filed.

207

United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 21.
<i>vs.</i>	
THE INTERSTATE COMMERCE COMMISSION, RE- spondent. The United States, intervening respondent.	

UNITED STATES OF AMERICA, ss:

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 206, inclusive) to be a true and complete transcript of the proceedings had of record in the above-entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 24th day of November, A. D. 1911.

[SEAL OF THE

UNITED STATES COMMERCE COURT.]

G. F. SNYDER, *Clerk.*

To Goodrich Transit Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the Interstate Commerce Commission and the United States are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this eleventh day of November, in the year of our Lord one thousand nine hundred and eleven.

MARTIN A. KNAPP,

Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 17th day of November, A. D. 1911.

RALPH M. SHAW,

Sol'r for Appellee.

(Filed Nov. 20, 1911. United States Commerce Court. G. F. Snyder, Clerk.)

209 In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,

v.

INTERSTATE COMMERCE COMMISSION, RESPONDENT,
and the United States, intervening respondent. } No. 21.

STIPULATION.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause by their respective solicitors that Exhibit A, attached to the original bill of complaint filed December 29, 1910, in the Circuit Court of the United States for the Northern District of Illinois, and Exhibit A, attached to the amended petition filed in the Commerce Court April 17, 1911, are one and the same and need not be printed in the record in the above-entitled cause, but that sufficient copies thereof shall be furnished to the court for use on the hearing of the appeal, and such copies so furnished may be used to all intents and purposes as though printed in the record.

Dec. 6, 1911.

RALPH M. SHAW,
Solicitor for Petitioner.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

BLACKBURN ESTERLINE,
For the United States.

210 (Indorsed:) File No. 22955. Supreme Court U. S. October Term, 1911. Term No., 879. The Interstate Commerce Commission and The United States, appellants, *vs.* Goodrich Transit Company. Stipulation to omit portions of the record in printing. Filed December 8, 1911.

(Indorsement on cover:) File No., 22955. United States Commerce Court. Term No., 879. The Interstate Commerce Commission and The United States, appellants, *vs.* Goodrich Transit Company. Filed December 8, 1911. File No., 22955.





In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION and The United States, appellants, v. GOODRICH TRANSIT COMPANY.	}	No. 879.
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APPEAL FROM THE UNITED STATES COMMERCE COURT.

MOTION TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and moves the court to advance the above-entitled cause for hearing at this term.

The appeal is from a final order or decree of the Commerce Court entered October 13, 1911, permanently enjoining the enforcement of an order of the Interstate Commerce Commission.

The following questions, among others, are involved:

1. Whether the Interstate Commerce Commission is authorized by section 20 of the act to regulate commerce, as amended, to require Goodrich Transit Company, a water-line carrier, to report annually

any business other than that conducted partly by it and partly by railroad under a common control, management, or arrangement for a continuous carriage or shipment.

2. Whether the Interstate Commerce Commission is authorized to require annual reports from Goodrich Transit Company, a water-line carrier, showing all matters which are specifically described in section 20 of the act to regulate commerce, as amended.

3. Whether the scope of the report authorized by section 20 is restricted by the provisions of section 1 of the act to regulate commerce, as amended.

4. The public interests are involved.

The reports sought by the Interstate Commerce Commission are due on or before July 1 of each year, and unless the opinion and judgment of this court is obtained prior to July 1, 1912, no such reports of common carriers covering business required by the orders will be made until July 1, 1913.

The priority suggested is authorized by section 2 of the act of June 18, 1910 (36 Stat. L., Pt. I, c. 309, p. 542).

Opposing counsel concur.

F. W. LEHMANN,
Solicitor General.

DECEMBER, 1911.

11.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 880.

THE INTERSTATE COMMERCE COMMISSION AND THE
UNITED STATES, APPELLANTS.

VS.

GOODRICH TRANSIT COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 9, 1911.

(22956)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 880.

THE INTERSTATE COMMERCE COMMISSION AND THE
UNITED STATES, APPELLANTS.

vs.

GOODRICH TRANSIT COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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United States Commerce Court.

GOODRICH TRANSIT CO., PETITIONER,

vs.

THE INTERSTATE COMMERCE COMMISSION, RESPONDENT, No. 22.

THE UNITED STATES, INTERVENING RESPONDENT.

UNITED STATES OF AMERICA, *ss.*

Be it remembered that in the United States Circuit Court for the Northern District of Illinois, Eastern Division, at the times herein-after mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Bill of complaint and exhibits.

(reclassification of operating expenses and revenue.)

Filed December 29, 1910.

1 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

GOODRICH TRANSIT COMPANY,
complainant.

v.

THE INTERSTATE COMMERCE COMMISSION,
defendant.

In Equity. No. —.

To the honorable judges of the Circuit Court of the United States within and for the Northern District of Illinois:

Goodrich Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, brings this its bill of complaint against the Interstate Commerce Commission, and thereupon your orator avers:

(1) That it, the said Goodrich Transit Company is a corporation organized and existing under and by virtue of the laws of the State of Maine, and it has its principal operating office in the city of Chicago, in the Eastern Division, Northern District of the State of Illinois.

(2) That the defendant, the Interstate Commerce Commission, has been created and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4th, 1887, and acts amendatory thereof and supplementary thereto.

2 (3) That your orator was organized in the year 1906, and since the date of its organization it has been engaged in the transportation of passengers and freight for hire on Lake Michigan, Lake Huron, and the rivers tributary thereto; that it owns and operates in its business ten steamers and one tug; that in addition to the foregoing your orator also owns or leases certain dock properties in the States of Illinois, Wisconsin and Michigan, that said

dock properties are located on Lakes Michigan and Huron, or at or near the mouths of rivers and tributaries thereof and are used by your orator as landing places at which its steamers, engaged in the business aforesaid, can from time to time dock and discharge and take on their freight and passengers; that your orator by means of said ten steamers and one tug is engaged in the following business:

(a) Said steamers carry for hire passengers and freight originating at ports in the States of Michigan, Wisconsin, and Illinois, and destined to ports in each of the States of Wisconsin, Michigan, and Illinois. This transportation is entirely by water and unconnected with any land transportation whatever, that is, your orator is engaged in "port to port" interstate business.

(b) Said steamers carry for hire passengers and freight originating at and destined to ports in the same State, and not passing out of said State en route; that is to say, your orator is engaged in intrastate "port to port" business.

(c) Your orator has voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried, under
3 joint tariffs; that for the purpose of establishing such through routes, it has voluntarily filed with the Interstate Commerce Commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers; that your orator's said steamers carry for hire passengers and freight under said joint tariffs over the water portion of said through routes.

(4) Your orator avers that more than 80 per cent of the gross revenue derived by your orator from all of its business as a common carrier, as aforesaid, is derived by your orator from its "port to port" business and intrastate business, as aforesaid, and that less than 20 per cent of said gross revenue is derived from its joint rail and water business.

(5) Your orator further avers that it has no power of condemnation; that it is subject to the fiercest competition and that any person, firm or corporation at any time may compete with your orator by placing a boat of any kind or character in service between the ports at which the boats of your orator touch and transact business; that no capital of any kind is required to engage in such competitive business except a sufficient amount to build, purchase or charter a boat and to pay the charges necessary to operate the same.

(6) Your orator further avers that there is no monopoly of docking privileges or terminal facilities at any point at which the boats of your orator touch, and that any person, firm or corporation desiring to compete with your orator may, upon the payment of a reasonable dockage fee, acquire docking or terminal facilities in each and every of the ports at which your orator's boats touch.

4 (7) Your orator further avers that heretofore, to wit, on the 31st day of May, 1910, the said the Interstate Commerce Commission acting under the authority claimed by it to have been conferred upon it by section 20 of the "act to regulate commerce," ap-

proved June 16, 1906, entered its two certain orders, which are in words and figures following, to wit:

"At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 31st day of May, 1910.

"Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

"The subject of a uniform system of accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

"It is ordered, that the classification of operating revenue of carriers by water with the text pertaining thereto prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, and embodied in printed form to be hereafter known as first issue, a copy of which is now before this commission, be, and the same is hereby, approved; that a copy thereof duly authenticated by the secretary of the commission be filed in its archives and a second copy thereof, in like manner authenticated, in the office of the bureau of statistics and accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

"It is further ordered, that the said classification of operating revenues of carriers by water with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by water subject to the provisions of the act to regulate commerce as amended

June 29, 1906, in the keeping and recording of their operating revenue accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating revenue accounts in conformity therewith; and that a copy of the said first issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

"It is further ordered that the rules contained in the said first issue of the classification of operating revenues of carriers by water are, and by virtue of this order do become, the lawful rules according to which the said operating revenues are defined; that each and every person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said rules in the keeping and recording of the operating revenue accounts of any such carrier; and that it shall be unlawful for any such carrier or for any receiver or operating trustee of any such carrier or for any person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier to keep any account or record or memorandum of any operating revenue item except in the manner and form in the said first issue set forth and hereby prescribed and except as hereinafter authorized.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account in the said first issue established as may be required for the purposes of any such carrier or of any receiver or operating trustee

of any such carrier; or may make assignment of the amount credited to any such primary account to operating divisions, to its individual lines, or to States; provided, however, that a list of such sub-
6 primary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier be first filed in the office of the bureau of statistics and accounts of this commission subject to disapproval by the commission.

"It is further ordered that in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said first issue becomes effective, keep and maintain, in addition to the operating revenue accounts hereby prescribed, such portion or portions of its present accounts with respects to operating revenue items as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may, in addition to the operating revenue accounts hereby prescribed, keep any temporary or experimental accounts the purpose of which is to develop the efficiency of operations; provided, however, that such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed; and that any such temporary or experimental accounts shall be open to inspection by the commission.

"It is further ordered that January 1, 1911, be, and is hereby, fixed as the date on which the said first issue shall become effective.

"A true copy:

"EDW. A. MOSELEY, *Secretary.*"

7 "At a general session of the Interstate Commerce Commission, held at its office at Washington, D. C., on the 31st day of May, 1910.

"Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

"The subject of a uniform system of accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

"It is ordered that the classification of operating expenses of carriers by water with the text pertaining thereto, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, and embodied in printed form to be hereafter known as first issue, a copy of which is now before this commission, be, and the same is hereby, approved; that a copy thereof duly authenticated by the secretary of the commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of

the bureau of statistics and accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

"It is further ordered that the said classification of operating expenses of carriers by water with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by water subject to the provisions of the act to regulate commerce as amended June 29, 1906, in the keeping and recording of their operating expense accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating expense accounts in conformity therewith; and that a copy of the said first issue be sent to each and every such carrier and to each
8 and every receiver or operating trustee of any such carrier.

"It is further ordered that the rules contained in the said first issue of the classification of operating expenses of carriers by water are, and by virtue of this order do become, the lawful rules according to which the said operating expenses are defined; that each and every person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said rules in the keeping and recording of the operating expense accounts of any such carrier; and that it shall be unlawful for any such carrier or for any receiver or operating trustee of any such carrier or for any person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier to keep any account or record or memorandum of any operating expense item except in the manner and form in the said first issue set forth and hereby prescribed, and except as hereinafter authorized.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account in the said first issue established as may be required for the purposes of any such carrier or of any receiver or operating trustee of any such carrier; or may make assignment of the amount charged to any such primary account to operating divisions, to its individual lines, or to States; provided, however, that a list of such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier be first filed in the office of the bureau of statistics and accounts of this commission, subject to disapproval by the commission.

"It is further ordered that in order that the basis of comparison with previous years be not destroyed, any such carrier or any
9 receiver or operating trustee of any such carrier may, during the twelve months from the time that the said first issue becomes effective, keep and maintain, in addition to the operating expense accounts hereby prescribed, such portion or portions of its present accounts with respect to operating expense items as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the

same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may, in addition to the operating expense accounts hereby prescribed, keep any temporary or experimental accounts the purpose of which is to develop the efficiency of operations; provided, however, that such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed; and that any such temporary or experimental accounts shall be open to inspection by the commission.

"It is further ordered that January 1, 1911, be, and is hereby, fixed as the date on which the said first issue shall become effective.

"A true copy:

"EDW. A. MOSELEY, *Secretary.*"

(8) Your orator avers that thereupon the said the Interstate Commerce Commission caused a copy of each of said orders to be served upon your orator and at the same time delivered or caused to be served upon your orator two pamphlets, one of which was entitled "The classification of operating revenues by carriers by water, as prescribed by the Interstate Commerce Commission, in accordance with section 20 of the 'act to regulate commerce,'" and the
10 other of which was entitled "Classification of operating expenses of carriers by water, as prescribed by the Interstate Commerce Commission in accordance with section 20 of the 'act to regulate commerce,'" copies of which said pamphlets are attached hereto and made a part hereof and marked, respectively, "Exhibits A and B."

Your orator avers that the bookkeeping methods prescribed by the said Interstate Commerce Commission in said Exhibits A and B differ widely from those now in use by your orator; and that in order to comply with said requirements contained in said Exhibits A and B it will be necessary for your orator to open up a completely new set of books and to change your orator's present methods of accounting, all of which will entail upon your orator great annoyance and expense.

(9) Your orator avers that the said the Interstate Commerce Commission has notified your orator that it will require your orator, beginning with the first day of January, 1911, to open a new set of books and thereafter to conform to the method of accounting prescribed in said Exhibits A and B with respect to all of its business, including its intrastate business, its "port to port" interstate business, and its business as a part of joint routes with rail carriers, as hereinabove referred to; and has notified your orator that in the event of its failure to conform its books and methods of accounting to the requirements as prescribed in said Exhibits A and B that it will be subject to the penalties prescribed in section 20 of the "act to regulate commerce," and will be prosecuted for violation thereof.

11 (10) Your orator further avers that said requirements so made by the said commission upon your orator make no distinction between the books which your orator may keep and its method of accounting for its income and expenses in connection with its intrastate business, its "port to port" business, and the business which is transacted by your orator as the result of the joint rail and water routes to which your orator has become a voluntary party, as aforesaid; but your orator avers that because of the fact that your orator has voluntarily become a party to the joint rail and water routes hereinabove referred to, the said the Interstate Commerce Commission, acting under the pretended authority of section 20, hereinabove referred to, claims and insists that it has the power to prescribe how your orator shall keep all of its books of account.

(11) Your orators avers that the "act to regulate commerce," as amended in June, 1906, conferred upon the Interstate Commerce Commission the same authority, if any, as it now has with respect to accounting methods, forms, and memoranda of common carriers subject to its jurisdiction, but your orator avers that though said authority and duty, if any, as are conferred and imposed upon the commission, were conferred and imposed upon it in June, 1906, that the said the Interstate Commerce Commission has never prior to the entry of the order herein complained of prescribed or attempted to prescribe any accounting methods or forms with respect to the books of account of water carriers generally, of which your orator is one; and that the said the Interstate Commerce Commission has not, since the amendment of June, 1906, up to the entry of the orders of May 31, 1910, hereinabove referred to, attempted to compel your orator to keep its books of account in any method whatsoever.

12 Your orator further shows that the Interstate Commerce Commission on January 7, 1909, in opinion No. 787, in interpreting the act to regulate commerce, and its powers thereunder made the following ruling, to wit:

"That carriers of interstate commerce, by water, are subject to the act to regulate commerce only in respect to traffic transported under a common control, management, or arrangement with a rail carrier, and in respect to traffic not so transported they are exempted from its provision."

(12) Your orator further avers that the said the Interstate Commerce Commission when it entered the orders herein complained of did not enter them or either of them because of any duty imposed upon it under and by virtue of any other act of Congress heretofore passed, except the "act to regulate commerce," and your orator avers that there was no act in existence conferring any authority upon or imposing any duty upon the Interstate Commerce Commission with respect to water carriers, of which your orator avers it is one, except the "act to regulate commerce," and the amendments thereto.

(13) Your orator avers:

(a) That under the Constitution of the United States, no power was conferred upon the Congress of the United States to regulate, in

any method whatsoever, the internal affairs of any corporation organized under the laws of the State of Maine or of any other State;

(b) That under the Constitution of the United States no power was conferred upon the Congress of the United States to delegate unto any commission or other subordinate body, the right to regulate, in any method whatsoever, the internal affairs of any corporation organized under the laws of the State of Maine or of any other State;

(c) That such power, if any, as Congress had to pass section 20 of the act regulating commerce, as amended in June, 1906, and as amended in June, 1910, is derived solely from that provision of the Constitution of the United States reading as follows: "Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and that under and by virtue of the grant of power contained in the said provision of the Constitution, no power was conferred upon the Congress of the United States to regulate any commerce which is wholly intrastate; that under and by virtue of the act to regulate commerce as amended, the Congress of the United States did not confer or intend to confer upon the Interstate Commerce Commission the right to regulate all or any part of the business of your orator which was solely "port to port" business, either interstate or intrastate; that under the terms of the first section of the "act to regulate commerce" as now amended, it is provided that "the provisions of this act shall apply to * * * any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or of the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory * * *

14 provided, however, that the provisions of this act shall not apply to the transportation of passengers or property or the receiving, delivering, storing, or handling of property wholly within one State and not shipped to or from a foreign country * * *;" that under and by virtue of the provisions aforesaid, all of the business of your orator which is wholly intrastate or wholly "port to port" interstate business is excluded from the terms of the act; and that it was not the intention of Congress, by the passage of the act, to confer upon the Interstate Commerce Commission the right to prescribe the bookkeeping methods of your orator with respect either to its intrastate business or the "port to port" business of your orator.

(14) Your orator further avers that it derives its right to exist, its right to elect its officers, to establish its by-laws, its power to make contracts, to bring suit, to collect its debts, and to keep its books of accounts from the State of Maine and not from the United States, or from any legislative enactment of the Congress of the United

States; that the power to regulate interstate commerce conferred upon the Congress of the United States did not include the power to regulate or prescribe the method by which the books of a corporation, organized under the laws of the State of Maine, should be kept.

(15) Your orator further avers that under the Constitution of the United States the power was not conferred upon the Congress of the United States to require your orator to keep its books in accordance with the requirements and rules contained in Exhibits A and B hereto attached. Your orator therefore avers that the orders of the Interstate Commerce Commission of May 31, 1910, are void for the following reasons:

15 a. Because the rules and regulations prescribed in said Exhibits A and B are not a regulation of interstate commerce, but are a regulation of the internal affairs of a corporation of the State of Maine.

b. Because Congress was without power to establish such rules and regulations itself.

c. Because Congress was without power to delegate such authority to the Interstate Commerce Commission.

d. Because Congress did not delegate such power or authority to the Interstate Commerce Commission.

e. Because the right of your orator to keep its books in such a manner and in accordance with such rules that seems to it appropriate is a property right and the deprivation of your orator's right to keep its books in such a manner as seems to it most appropriate is a taking from your orator of your orator's property without compensation and without due process of law in violation of the fifth amendment to the Constitution of the United States.

(16) Your orator further avers that if section 20 of the "act to regulate commerce" as amended should be construed as conferring upon the Interstate Commerce Commission the right to require your orator to keep its books in accordance with the requirements contained in Exhibits A and B hereto attached, then your orator avers that said section 20 of the "act to regulate commerce," and especially that part thereof which shall be construed as conferring upon the commission the right to prescribe the requirements contained in said Exhibits A and B is void for the reason that the Constitution of the

United States did not confer upon the Congress the authority to regulate the bookkeeping methods of your orator, and because the Constitution of the United States did not confer upon the Congress of the United States the right to prescribe the bookkeeping methods of your orator with respect to its intrastate business, and because the Constitution of the United States did not confer upon the Congress of the United States the power to delegate the authority to the Interstate Commerce Commission, contained in said section 20, and because the Constitution of the United States did not confer upon the Congress of the United States the power to delegate to the Interstate Commerce Commission the right to prescribe any of the bookkeeping methods of your orator, and most

especially the power to prescribe the bookkeeping methods of your orator with respect to its intrastate business, and because the requirements contained in said Exhibits A and B are not a regulation of interstate commerce, and because said section 20, if construed as aforesaid, would be in violation of the fifth amendment to the Constitution of the United States in that it would be a taking of your orator's property without compensation and without due process of law; for each, every, and all of which said reasons your orator avers that the attempt of the Interstate Commerce Commission to require your orator to keep its books and all office accounts in accordance with the requirements contained in said Exhibits A and B is an unlawful interference with the business of your orator.

(17) Your orator further avers that said section 20 is also void because in said section 20 it is made a crime for any common carrier subject to the act to keep any accounts, records, or memoranda other than those prescribed or approved by the Interstate Commerce

17 Commission, or to destroy any record or memorandum kept by any common carrier.

(18) Your orator further avers that in said act as approved no distinction is made between the accounts, records, and memoranda with respect to intrastate business and accounts, records, and memoranda respecting interstate business, and your orator avers that even if the right to prescribe methods of bookkeeping can be construed as being a regulation of interstate commerce and not a regulation of the internal affairs of a corporation, nevertheless, your orator avers that Congress is totally without power to prohibit your orator from keeping such accounts, records, and memoranda as it sees fit with respect to its intrastate business, and from prohibiting your orator from so disposing of its records and memoranda with respect to its intrastate business as it may elect.

(19) Your orator further avers that, notwithstanding the said orders of the Interstate Commerce Commission are void, if your orator fails, on the first day of January, 1911, to conform to the requirements contained in said Exhibits A and B that the said the Interstate Commerce Commission will bring or will cause to be brought against your orator a large number of suits to recover the penalties claimed by it to be due from your orator to the United States because of your orator's failure to comply with the said void orders; that the penalties prescribed in said act for failure to keep the accounts, records, and memoranda as prescribed by the commission is \$500.00 a day for each and every day during the failure to so conform to said requirements, and that the penalties prescribed

18 by said act for destroying any of the memoranda prescribed by said commission, or any other memoranda which a common carrier, subject to the act, may have, is a fine of not less than \$1,000 or more than \$5,000, or imprisonment for a term of not less than one year or more than three years, or both; that the prosecution of your orator for failure to keep your orator's books in accordance with the requirements contained in said Exhibits A and B would be contrary

to equity and good conscience and tend to the manifest wrong and injury of your orator.

(20) Your orator therefore prays that upon the filing of this bill a temporary or interlocutory order may be entered herein suspending the said orders and each of them of the said the Interstate Commerce Commission and restraining the said commission from taking any steps or instituting any proceedings to enforce said orders or either of them, and that, upon the final hearing of this cause, a decree may be entered herein enjoining, setting aside, annulling, or suspending said orders and each of them of the said Interstate Commerce Commission, and perpetually enjoining the enforcement of said orders or either of them, and perpetually enjoining said commission or its members, their agents, servants, and representatives from enforcing the said orders or either of them and from taking any steps or taking any proceedings toward the enforcement of said orders or either of them.

(21) Your orator further prays that, if in the judgment of this honorable court said the Interstate Commerce Commission has the authority to require your orator to keep its books, or any part thereof, in accordance with any of the requirements contained in said
19 orders or either of them, that this court will, upon the final hearing hereof, cause a decree to be entered herein specifically designating such requirements, if any, to which the Interstate Commerce Commission may lawfully require your orator to conform, and enjoining, setting aside, annulling, or suspending the orders and each of them of the said the Interstate Commerce Commission with respect to each and every of the other requirements contained in said Exhibits A and B and perpetually enjoining the enforcement of said orders and each of them with respect to such remaining requirements and each of them and perpetually enjoining said commission, its members, their agents, servants, and representatives from enforcing the said orders or either of them with respect to any or either of said remaining requirements, and from taking any steps or any proceedings toward the enforcement of said orders or either of them with respect to such last-mentioned requirements.

And your orator further prays that if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order as prayed for herein, an order may be issued herein suspending said orders and each of them of the said Interstate Commerce Commission and enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory decree prayed for herein.

And your orator prays that such other and further relief be granted in the premises as equity and justice may require.

Your orator prays that your honors may grant unto your orator the writ of subpoena of the United States of America directed
20 to the said the Interstate Commerce Commission, commanding said defendant on a certain day and under a certain penalty herein to be specified, personally to be and appear before this honor-

able court and then and there full, true, and complete answer to make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray:

GOODRICH TRANSIT COMPANY,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

21 STATE OF ILLINOIS, *County of Cook, ss:*

Albert W. Goodrich, being first duly sworn, says he is the president of the Goodrich Transit Company, the complainant and the above and foregoing bill of complaint; that he has read the same and knows the contents thereof and that the said facts as therein stated are true.

ALBERT W. GOODRICH.

Subscribed and sworn to before me this 29th day of December, A. D. 1910.

[NOTARIAL SEAL.]

JESSE B. HAWKES, *Notary Public.*

(Exhibits A and B omitted in printing, per stipulation.)

67

Certificate of the Acting Attorney General.

Filed December 29, 1911.

In the Circuit Court of the United States for the Northern District of Illinois.

GOODRICH TRANSIT COMPANY,	} No. 30255.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION.	

To the clerk of said court:

I hereby certify that the above entitled cause, now pending in said court, is a suit in equity brought for the purpose of enjoining and setting aside an order of the Interstate Commerce Commission, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,'" approved February 11, 1903, and complying with the provisions of the act to regulate commerce of February 4, 1887, as amended by the act of June 29, 1906, and more particularly of section 16 of said act, you will file this certificate among the records of the above entitled court, and immediately

furnish a copy thereof to each of the circuit judges of the Seventh Circuit, to the end that said case shall be given precedence over other cases in said court and be assigned for hearing at the earliest practicable date, before not less than three of the circuit judges of said circuit, as provided by the said act of February 11, 1903.

J. A. FOWLER,

Acting Attorney General.

WASHINGTON, D. C., *December 28, 1910.*

69 *Demurrer of the Interstate Commerce Commission.*

Filed December 30, 1910.

In the Circuit Court of the United States of America for the Northern District of Illinois, Eastern Division.

GOODRICH TRANSIT COMPANY, COMPLAINANT,

v.

THE INTERSTATE COMMERCE COMMISSION,
Defendant.

In Equity. No. 30255.

Demurrer of the Interstate Commerce Commission, the above-named defendant, to the bill of complaint of the above-named complainant.

DEMURRER.

The Interstate Commerce Commission, the defendant in the above-entitled suit, by protestation, not confessing or acknowledging any of the matters or things in the bill of complaint of the above-named complainant contained to be true in such manner and form as therein set forth and alleged, demurs to said bill. And for cause of demurrer shows:

I.

That said complainant has not, in and by its said bill, shown any equity existing in it.

II.

That said complainant has not, in and by said bill, shown that it is entitled to the relief or any of the relief prayed for by it in and by said bill.

III.

That said complainant has not, in and by said bill, shown that the legislative department of the Government of the United States is or ever has been without power to grant the authority exercised by this defendant in making the orders dated May 31, 1910, set forth in said complainant's said bill.

IV.

That said complainant has not, in and by said bill, shown that said legislative department did not duly confer upon this defendant the authority exercised by this defendant in making said orders.

V.

That said complainant has not, in and by said bill, shown that the subject-matter of said orders is not within the jurisdiction conferred upon this defendant by said legislative department.

VI.

That said complainant has not, in and by said bill, shown that in making said orders this defendant exercised authority in excess of the authority conferred upon it by said legislative department.

VII.

That said complainant has not, in and by said bill, shown that in making said orders this defendant exercised unlawfully the authority or any of the authority conferred upon it by said legislative department.

VIII.

That said complainant has not, in and by said bill, shown that in making said orders this defendant violated any constitutional or other right of said complainant over which this court has or may exercise jurisdiction.

Wherefore and for divers other good causes of demurrer appearing in and by said bill, this defendant demurs thereto and prays the judgment of this honorable court whether defendant shall be compelled to make any answer to the said bill or any part thereof.

71

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Its Solicitor.*

EDWIN W. SIMS,
United States Attorney, Chicago, Illinois,

P. J. FARRELL,
Special Assistant United States Attorney, Washington, D. C.
Solicitors for Interstate Commerce Commission.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

P. J. FARRELL,
Solicitor for Defendant, Interstate Commerce Commission.

CHICAGO, ILLINOIS, *County of Cook, ss:*

P. J. FARRELL, being first duly sworn, says on oath that he is the solicitor of the Interstate Commerce Commission, the defendant in

the above-entitled suit, and that the foregoing demurrer is not interposed for delay.

Subscribed and sworn to before me, William A. Small, a notary public in and for said county of Cook, this 30th day of December, 1910.

[NOTARIAL SEAL.]

WILLIAM A. SMALL, *Notary Public*.

72

Temporary restraining order.

Entered December 31, 1910.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

SATURDAY, *December 31, 1910.*

Present: Honorable Peter S. Grosscup, circuit judge; Honorable Francis E. Baker, circuit judge; Honorable William H. Seaman, circuit judge.

GOODRICH TRANSIT COMPANY

vs.

THE INTERSTATE COMMERCE COMMISSION. } 30255.

This day, this cause coming on to be heard on motion of complainant for a temporary restraining order, all parties being before the court, the court having heard the arguments of counsel, the court doth order and it is hereby ordered that, the court not having had sufficient time to fully consider this application, the orders of the commission complained of are stayed until the further order of this court.

73 *Order transferring cause to United States Commerce Court.*

Entered February 25, 1911.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

SATURDAY, *February 25, 1911.*

Present: Hon. Christian C. Kohlsaatt, circuit judge.

GOODRICH TRANSIT COMPANY

vs.

THE INTERSTATE COMMERCE COMMISSION. } 30255.

It is ordered by the court that the clerk of this court transmit to and file in the United States Commerce Court the originals of all papers filed in this case and a certified transcript of all record entries up to and including this date, in compliance with section 6 of an act to create a Commerce Court and to amend the act entitled "An act

to regulate commerce," approved February 4th, 1887, as heretofore amended, and for other purposes, approved June 18th, 1910.

- 74 *Certificate of clerk of United States Circuit Court for the Northern District of Illinois, Eastern Division.*

NORTHERN DISTRICT OF ILLINOIS.

Eastern Division, ss:

I, John H. R. Jamar, clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be true and complete copies of the certain orders entered of record in said court, on the thirty-first day of December, 1910, and on the twenty-fifth day of February, 1911, in the cause entitled "Goodrich Transit Company vs. The Interstate Commerce Commission," as the same appear from the original record thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, in said district, this first day of March, 1911.

[Seal of United States Circuit Court,
Northern District of Illinois.]

JOHN H. R. JAMAR, *Clerk.*

- 75 *Certificate of clerk of United States Circuit Court for the Northern District of Illinois, Eastern Division, transmitting original files to the United States Commerce Court.*

Filed in the United States Commerce Court March 6, 1911.

NORTHERN DISTRICT OF ILLINOIS.

Eastern Division, ss:

I, John H. R. Jamar, clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify that in compliance with section 6 of an act to create a Commerce Court and to amend the act entitled "An act to regulate commerce," approved February 4th, 1887, as heretofore amended, and for other purposes, approved June 18th, 1910, I herewith transmit to the Commerce Court all the original files in the cause entitled "Goodrich Transit Company vs. The Interstate Commerce Commission.

Bill of complaint, together with Exhibits "A" and "B" thereto attached, filed December 29, 1910.

Certificate of the Attorney General under the act of February 11, 1903, filed December 29, 1910.

Demurrer filed December 30, 1910.

Draft of order entered of record February 25, 1911 (1911).

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, in said district, this first day of March, 1911.

[Seal of the United States Circuit Court,
Northern District of Illinois.]

JOHN H. R. JAMAR, *Clerk.*

76 Be it further remembered that said cause having been transferred to the United States Commerce Court, in accordance with section 6 of the act of Congress, approved June 18, 1910, the following papers were filed and proceedings had in said United States Commerce Court, in said cause, at the times hereinafter mentioned, to wit:

77 *Order permitting United States to intervene.*

Filed April 3, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 22.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	

In this cause the United States moves the court that it be permitted to intervene and to become a party defendant; and it appearing to the court that the cause involves public interests, the motion is allowed, and the United States is made a party defendant accordingly, and, having presented its answer to complainant's bill, the same was ordered to be filed.

78 *Journal entry.*

Proceedings of April 3, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 21.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 22.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	

Upon request of counsel said causes were assigned for argument with numbers twenty-three and twenty-four on Wednesday, April 12, 1911, after number fifteen.

79 *Answer of the United States.*

Filed April 4, 1911.

In the United States Commerce Court.

April Term, 1911.

GOODRICH TRANSIT COMPANY, COMPLAINANT,	} No. 22.
<i>v.</i>	
THE UNITED STATES.	

ANSWER OF DEFENDANT, THE UNITED STATES.

The defendant, the United States, for answer to the bill of complaint filed in this cause, says:

I.

It admits each and every allegation of fact contained therein, except as follows:

While it is true that the requirements made by the orders set forth in the original bill make no distinction between complainant's income and expenses in connection with its interstate business and intrastate business, yet defendant avers that such distinction was not made, because:

1. While the income from the different kinds of business stated in the bill can with reasonable accuracy be ascertained, yet it is impossible to determine with any substantial degree of accuracy the expenses incurred in either of said kinds of business as separate and distinct from the others.

2. It is essential that the commission be informed as to the total income derived by complainant from all its investments and from all sources, in order that the commission may determine what are reasonable and just rates to be charged by complainant in its joint rail and water business, and to determine whether or not in all respects it complies with the provisions of the laws of the United States regulating interstate commerce.

Defendant therefore avers that there is a most material and substantial relationship between all the information sought in the order attacked in the bill and the interstate commerce carried by complainant, and the legitimate duties of the Interstate Commerce Commission prescribed by the act creating the same and under which it operates; and that it would be impossible for said commission to perform its duties in an efficient way without the information in regard to complainant's intrastate and port-to-port business.

II.

While defendant admits all other allegations of fact contained in the petition, yet it does not admit, but denies, all inferences of fact from particular facts alleged, and all conclusions of law insisted upon in the bill of complaint.

And, now having fully answered, defendant prays to be hence dismissed.

GEO. W. WICKERSHAM,
Attorney General of the United States.

J. A. FOWLER,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

APRIL, 1911.

82

Journal entry.

Proceedings of April 11, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 21.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 22.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 23.
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 24.
THE UNITED STATES, RESPONDENT.		

Upon request of counsel, the hearing of said causes was postponed until Monday, April 17, 1911.

83

Appearance of Charles W. Needham.

Filed April 17, 1911.

APRIL 17, 1911.

The CLERK OF THE UNITED STATES COMMERCE COURT,
Washington, D. C.

SIR: Please enter my appearance as attorney for the Interstate Commerce Commission in Nos. 21, 22, 23, and 24.

Very respy.,

CHAS. W. NEEDHAM.

84

Journal entry.

Proceedings of April 17, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 21.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 22.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 23.
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 24.
THE UNITED STATES, RESPONDENT.		

Said causes came on for hearing on the demurrers in numbers 21 and 22 and the motions to dismiss in numbers 23 and 24, and the

arguments of counsel were commenced, Mr. Charles W. Needham appearing in behalf of the Interstate Commerce Commission and Mr. Ralph M. Shaw in behalf of the petitioners.

Petitioners were given leave to file amended bills in numbers 21 and 22, with the understanding that the demurrers of the Interstate Commerce Commission interposed to the original bills stand as demurrers to the amended bills.

85

Amended bill of complaint and exhibits.

(Re classification of operating expenses and revenue.)

Filed April 17, 1911.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

GOODRICH TRANSIT COMPANY, COMPLAINANT,

v.

THE INTERSTATE COMMERCE COMMISSION,
defendant.

In Equity. No. —.

To the honorable judges of the Circuit Court of the United States within and for the Northern District of Illinois:

Goodrich Transit Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, brings this its bill of complaint against the Interstate Commerce Commission, and thereupon your orator avers:

(1) That it, the said Goodrich Transit Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, and it has its principal operating office in the city of Chicago, in the Eastern Division, Northern District of the State of Illinois.

(2) That the defendant, The Interstate Commerce Commission, has been created and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4th, 1887, and acts amendatory thereof and supplementary thereto.

86 (3) That your orator was organized in the year 1906, and since the date of its organization it has been engaged in the transportation of passengers and freight for hire on Lake Michigan, Lake Huron, and the rivers tributary thereto; that it owns and operates in its business ten steamers and one tug; that in addition to the foregoing your orator also owns or leases certain dock properties in the States of Illinois, Wisconsin, and Michigan; that said dock properties are located on Lakes Michigan and Huron, or at or near the mouths of rivers and tributaries thereof, and are used by your orator as landing places at which its steamers, engaged in the business aforesaid, can from time to time dock and discharge and take on their

freight and passengers; that your orator by means of said ten steamers and one tug is engaged in the following business:

(a) Said steamers carry for hire passengers and freight originating at ports in the States of Michigan, Wisconsin, and Illinois, and destined to ports in each of the States of Wisconsin, Michigan, and Illinois. This transportation is entirely by water and unconnected with any land transportation whatever; that is, your orator is engaged in "port to port" interstate business.

(b) Said steamers carry for hire passengers and freight originating at and destined to ports in the same State, and not passing out of said State en route; that is to say, your orator is engaged in intrastate "port to port" business.

(c) Your orator has voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried, under
87 joint tariffs; that for the purpose of establishing such through routes, it has voluntarily filed with the Interstate Commerce Commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers; that your orator's said steamers carry for hire passengers and freight under said joint tariffs over the water portion of said through routes.

(4) Your orator avers that more than 80 per cent of the gross revenue derived by your orator from all of its business as a common carrier, as aforesaid, is derived by your orator from its "port to port" business and intrastate business, as aforesaid, and that less than 20 per cent of said gross revenue is derived from its joint rail and water business.

(5) Your orator further avers that it has no power of condemnation; that it is subject to the fiercest competition, and that any person, firm, or corporation at any time may compete with your orator by placing a boat of any kind or character in service between the ports at which the boats of your orator touch and transact business; that no capital of any kind is required to engage in such competitive business except a sufficient amount to build, purchase, or charter a boat and to pay the charges necessary to operate the same.

(6) Your orator further avers that there is no monopoly of docking privileges or terminal facilities at any point at which the boats of your orator touch, and that any person, firm, or corporation desiring to compete with your orator may, upon the payment of a reasonable dockage fee, acquire docking or terminal facilities in each and every of the ports at which your orator's boats touch.

(7) Your orator further avers that heretofore, to wit,
88 on the 31st day of May, 1910, the said the Interstate Commerce Commission, acting under the authority claimed by it to have been conferred upon it by section 20 of the "Act to regulate commerce," approved June 16, 1906, entered its two certain orders, which are in words and figures following, to wit:

"At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 31st day of May, 1910.

"Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

"The subject of a uniform system of accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

"It is ordered that the classification of operating revenue of carriers by water, with the text pertaining thereto, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, and embodied in printed form to be hereafter known as first issue, a copy of which is now before this commission be, and the same is hereby, approved; that a copy thereof duly authenticated by the secretary of the commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the bureau of statistics and accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

"It is further ordered that the said classification of operating revenues of carriers by water, with the text pertaining thereto be, and is hereby, prescribed for the use of carriers by water, 89 subject to the provisions of the act to regulate commerce as amended June 29, 1906, in the keeping and recording of their operating revenue accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating revenue accounts in conformity therewith; and that a copy of the said first issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

"It is further ordered that the rules contained in the said first issue of the classification of operating revenues of carriers by water are, and by virtue of this order do become, the lawful rules according to which the said operating revenues are defined; that each and every person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said rules in the keeping and recording of the operating revenue accounts of any such carrier; and that it shall be unlawful for any such carrier or for any receiver or operating trustee of any such carrier or for any person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier to keep any account or record or memorandum of any operating revenue item except in the manner and form in the said first issue set forth and hereby prescribed, and except as hereinafter authorized.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account in the said first issue established, as may be required for the purposes of any such carrier or of any receiver or operating

trustee of any such carrier; or may make assignment of the amount credited to any such primary account to operating divisions, to its individual lines, or to States; provided, however, that a list
90 of such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier be first filed in the office of the bureau of statistics and accounts of this commission, subject to disapproval by the commission.

"It is further ordered that, in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said first issue becomes effective, keep and maintain, in addition to the operating revenue accounts hereby prescribed, such portion or portions of its present accounts with respects to operating revenue items as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or during the same period may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may, in addition to the operating revenue accounts hereby prescribed, keep any temporary or experimental accounts the purpose of which is to develop the efficiency of operations; provided, however, that such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed; and that any such temporary or experimental accounts shall be open to inspection by the commission.

"It is further ordered that January 1, 1911, be, and is hereby, fixed as the date on which the said first issue shall become effective.

"A true copy:

"EDW. A. MOSELEY, *Secretary.*"

91 "At a general session of the Interstate Commerce Commission, held at its office at Washington, D. C., on the 31st day of May, 1910.

"Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Kane, Edgar E. Clark, James S. Harlan, commissioners.

"The subject of a uniform system of accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

"It is ordered that the classification of operating expenses of carriers by water with the text pertaining thereto, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, and embodied in printed form to be hereafter known as first issue, a copy of which is now before this commission, be, and the same is hereby, approved; that a copy thereof duly authenticated by the secretary of the commission be filed in its archives, and

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a second copy thereof, in like manner authenticated, in the office of the bureau of statistics and accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

"It is further ordered that the said classification of operating expenses of carriers by water with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by water subject to the provisions of the act to regulate commerce as amended June 29, 1906, in the keeping and recording of their operating expense accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating expense accounts in conformity therewith; and that a copy of the said first

issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

"It is further ordered that the rules contained in the said first issue of the classification of operating expenses of carriers by water are, and by virtue of this order do become, the lawful rules according to which the said operating expenses are defined; that each and every person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said rules in the keeping and recording of the operating expense accounts of any such carrier; and that it shall be unlawful for any such carrier or for any receiver or operating trustee of any such carrier or for any person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier to keep any account or record or memorandum of any operating expense item except in the manner and form in the said first issue set forth and hereby prescribed, and except as herein-after authorized.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account in the said first issue established as may be required for the purposes of any such carrier or of any receiver or operating trustee of any such carrier; or may make assignment of the amount charged to any such primary account to operating divisions, to its individual lines or to States; provided, however, that a list of such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier be first filed in the office of the bureau of statistics and accounts of this commission, subject to disapproval by the commission.

"It is further ordered that in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said first issue becomes effective, keep and maintain, in addition to the operating expense accounts hereby prescribed, such portion or portions of its present accounts with respect to operating expense items as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the

same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

"It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may, in addition to the operating expense accounts hereby prescribed, keep any temporary or experimental accounts the purpose of which is to develop the efficiency of operations; provided, however, that such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed; and that any such temporary or experimental accounts shall be open to inspection by the commission.

"It is further ordered that January 1, 1911, be, and is hereby fixed as the date on which the said first issue shall become effective.

"A true copy:

"EDW. A. MOSELEY, *Secretary*."

(8) Your orator avers that thereupon the said the Interstate Commerce Commission caused a copy of each of said orders to be served upon your orator, and at the same time delivered or caused to be served upon your orator two pamphlets, one of which was entitled "The classification of operating revenues of carriers by water, as prescribed by the Interstate Commerce Commission, in accordance with section 20 of the 'act to regulate commerce,'" and the
94 other of which was entitled "Classification of operating expenses of carriers by water, as prescribed by the Interstate Commerce Commission, in accordance with section 20 of the 'act to regulate commerce,'" copies of which said pamphlets are attached hereto and made a part hereof, and marked, respectively, "Exhibits A and B."

Your orator avers that the bookkeeping methods prescribed by the said Interstate Commerce Commission in said Exhibits A and B differ widely from those now in use by your orator; and that in order to comply with said requirements contained in said Exhibits A and B it will be necessary for your orator to open up a completely new set of books and to change your orator's present methods of accounting, all of which will entail upon your orator great annoyance and expense.

(9) Your orator avers that the said the Interstate Commerce Commission has notified your orator that it will require your orator, beginning with the first day of January, 1911, to open a new set of books and thereafter to conform to the method of accounting prescribed in said Exhibits A and B with respect to all of its business, including its intrastate business, its "port to port" interstate business, and its business as a part of joint routes with rail carriers, as hereinabove referred to; and has notified your orator that in the event of its failure to conform its book and methods of accounting to the requirements as prescribed in said Exhibits A and B, that it will be subject to the penalties prescribed in section 20 of the "act to regulate commerce" and will be prosecuted for violation thereof.

(10) Your orator further avers that said requirements so made by the said commission upon your orator make no dis-

95 tion between the books which your orator may keep and its method of accounting for its income and expenses in connection with its intrastate business, its "port to port" business, and the business which is transacted by your orator as the result of the joint rail and water routes to which your orator has become a voluntary party, as aforesaid; but your orator avers that because of the fact that your orator has voluntarily become a party to the joint rail and water routes hereinabove referred to, the said the Interstate Commerce Commission, acting under the pretended authority of section 20, hereinabove referred to, claims and insists that it has the power to prescribe how your orator shall keep all of its books of account.

(11) Your orators avers that the "act to regulate commerce," as amended in June, 1906, conferred upon the Interstate Commerce Commission the same authority, if any, as it now has with respect to accounting methods, forms, and memoranda of common carriers subject to its jurisdiction, but your orator avers that though said authority and duty, if any, as are conferred and imposed upon the commission were conferred and imposed upon it in June, 1906, that the said the Interstate Commerce Commission has never prior to the entry of the order herein complained of prescribed or attempted to prescribe any accounting methods or forms with respect to the books of account of water carriers generally, of which your orator is one, and that the said the Interstate Commerce Commission has not, since the amendment of June, 1906, up to the entry of the orders of May 31, 1910, hereinabove referred to, attempted to compel your orator to keep its books of account in any method whatsoever.

That though for many years your orator and other water carriers have voluntarily agreed with some interstate carriers by railroad to establish a limited number of through routes over which passengers or property have been transported by continuous carriage, and have filed tariffs therefor with the Interstate Commerce Commission, that said commission has never before ruled or claimed that by filing such tariffs your orator or other water carriers thereby subjected themselves to all of the provisions of the act to regulate commerce or to the provisions of section 20 thereof.

96 Your orator further shows that the Interstate Commerce Commission on January 7, 1909, in opinion No. 787, in interpreting the act to regulate commerce and its powers thereunder, made the following ruling, to wit:

"That carriers of interstate commerce, by water, are subject to the act to regulate commerce only in respect to traffic transported under a common control, management, or arrangement with a rail carrier, and in respect to traffic not so transported they are exempted from its provision."

(12) Your orator further avers that the said the Interstate Commerce Commission, when it entered the orders herein complained of, did not enter them or either of them because of any duty imposed upon it under and by virtue of any other act of Congress heretofore passed except the "act to regulate commerce," and your orator avers

that there was no act in existence conferring any authority upon or imposing any duty upon the Interstate Commerce Commission with respect to water carriers, of which your orator avers it is one, except the "act to regulate commerce" and the amendments thereto.

(13) Your orator avers:

(a) That under the Constitution of the United States no power was conferred upon the Congress of the United States to regulate in any method whatsoever the internal affairs of any corporation organized under the laws of the State of Maine, or of any other State;

(b) That under the Constitution of the United States no power was conferred upon the Congress of the United States to delegate unto any commission or other subordinate body the right to regulate, in any method whatsoever, the internal affairs of any corporation organized under the laws of the State of Maine, or of any other State;

(c) That such power, if any, as Congress had to pass section 20 of the act regulating commerce, as amended in June, 1906, and as amended in June, 1910, is derived solely from that provision of the Constitution of the United States reading as follows: "Congress shall have power * * * to regulate commerce with foreign nation and among the several States, and with the Indian tribes"; and that under and by virtue of the grant of power contained in the said provision of the Constitution no power was conferred upon the Congress of the United States to regulate any commerce which is wholly intrastate; that under and by virtue of the act to regulate commerce as amended the Congress of the United States did not confer or intend to confer upon the Interstate Commerce Commission the right to regulate all or any part of the business of your orator, which was solely "port to port" business, either interstate or intrastate; that under the terms of the first section of the "act to regulate commerce" as now amended it is provided that "The provisions of this act shall apply to * * * any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or of the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory * * *"

98 provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or the receiving, delivering, storing, or handling of property wholly within one State and not shipped to or from a foreign country * * *"; that under and by virtue of the provisions aforesaid all of the business of your orator, which is wholly intrastate or wholly "port to port" interstate business, is excluded from the terms of the act; and that it was not the intention of Congress, by the passage of the act, to confer upon the Interstate Commerce Commission the right to prescribe the bookkeeping methods of your orator with respect either

to its intrastate business or the "port to port" business of your orator.

(14) Your orator further avers that it derives its right to exist, its right to elect its officers, to establish its by-laws, its power to make contracts, to bring suit, to collect its debts, and to keep its books of accounts from the State of Maine and not from the United States or from any legislative enactment of the Congress of the United States; that the power to regulate interstate commerce conferred upon the Congress of the United States did not include the power to regulate or prescribe the method by which the books of a corporation organized under the laws of the State of Maine should be kept.

(15) Your orator, while denying that either the Congress of the United States or the Interstate Commerce Commission has any authority of any kind whatsoever over the bookkeeping methods of your orator with respect either to its income or its disbursements, shows that such jurisdiction, if any, as the Interstate Commerce Commission has over the bookkeeping methods of your orator is
99 limited solely to the bookkeeping methods with respect to the income and disbursements of your orator in connection with its joint rail and water business.

Your orator shows that the bookkeeping methods prescribed by the Interstate Commerce Commission in said orders Exhibits "A and B" are not reasonably adapted to the purpose of furnishing said Interstate Commerce Commission any information whatsoever with respect to the revenue or disbursements of your orator relating to its joint rail and water business; that there is no legitimate relation between said bookkeeping methods and the revenue derived by your orator from said source or the disbursements made in connection therewith.

(16) Your orator shows that if your orator should conform its bookkeeping methods to the rules and requirements established by the said Interstate Commerce Commission in the said orders and should report the same to the said Interstate Commerce Commission, that the information which it would thereby receive would not furnish to it any data whatsoever which would be more accurate than could be obtained by the Interstate Commerce Commission through the bookkeeping methods now in vogue and adopted by your orator.

That if your orator should conform to the rules and bookkeeping methods sought to be established by the commission as contained in said Exhibits "A" and "B," the said commission would not thereby be enabled to pass upon the justness, lawfulness, or fairness of any existing, proposed or possible rate classification, practice, or regulation of your orator in connection with its joint rail and water business, or in connection with the existence or establishment of any through route, joint classification or division of rates upon joint rail
and water business. And that if your orator should conform

100 its bookkeeping methods to the rules and regulations established by the said orders, the said Interstate Commerce Commission would not as the result thereof have any better or more

accurate information than it now has and that can be obtained from your orator's books as they are now kept upon any matter or thing concerning which a complaint may be filed under the act to regulate commerce or concerning which any question may arise under any of the provisions of the act or relating to the enforcement of any of the provisions of the act.

(17) Your orator further shows that it is possible to establish a method of bookkeeping by means of which the income and disbursements from the joint rail and water business of your orator would be segregated; and that it is not necessary for your orator to report or to keep its books as required by the Interstate Commerce Commission in order to furnish all of the information which your orator has or can get with respect to its interstate joint rail and water business, but your orator charges that the bookkeeping methods prescribed by said orders do not segregate in any manner your orator's joint rail and water business from your orator's "port to port" business or intrastate business, and that there is no reasonable relation between the bookkeeping methods required by said Interstate Commerce Commission and the income and disbursements of your orator with respect to its joint rail and water business, and that the bookkeeping methods required by the said orders are not reasonably adapted to accomplish any lawful duty imposed upon the interstate Commerce Commission.

(18) Your orator avers that the methods prescribed by the
101 said commission in the said orders are not such as the board of directors of your orator acting under their duties and obligations as such directors, deem prudent, advantageous, and necessary; and said orders if enforced will disable the directors in performing their duties in this respect in connection with the intrastate and "port to port" business of your orator, as well as with respect to the joint rail and water business.

That the entry of said orders was a legislative act and neither an administrative or judicial function.

(19) Your orator further avers that under the Constitution of the United States the power was not conferred upon the Congress of the United States to require your orator to keep its books in accordance with the requirements and rules contained in Exhibits A and B hereto attached. Your orator therefore avers that the orders of the Interstate Commerce Commission of May 31, 1910, are void for the following reasons:

a. Because the rules and regulations prescribed in said Exhibits A and B are not a regulation of interstate commerce, but are a regulation of the internal affairs of a corporation of the State of Maine.

b. Because Congress was without power to establish such rules and regulations itself.

c. Because Congress was without power to delegate such authority to the Interstate Commerce Commission.

d. Because the Congress did not have power to delegate its legislative power.

e. Because Congress did not delegate such power or authority to the Interstate Commerce Commission.

102 f. Because said bookkeeping methods are not reasonably adapted to the performance of any lawful duty imposed by the act to regulate commerce on the Interstate Commerce Commission, and because there is no legitimate relation between said orders and commerce between the States, or facilities and instrumentalities for carrying on the same.

g. Because the right of your orator to keep its books in such a manner and in accordance with such rules that seems to it appropriate is a property right, and the deprivation of your orator's right to keep its books in such a manner as seems to it most appropriate is a taking from your orator of your orator's property without compensation and without due process of law in violation of the fifth amendment to the Constitution of the United States.

(20) Your orator further avers that if section 20 of the "act to regulate commerce" as amended should be construed as conferring upon the Interstate Commerce Commission the right to require your orator to keep its books in accordance with the requirements contained in Exhibits A and B hereto attached, then your orator avers that said section 20 of the "act to regulate commerce," and especially that part thereof which shall be construed as conferring upon the commission the right to prescribe the requirements contained in said Exhibits A and B are void, for the reason that the Constitution of the United States did not confer upon the Congress the authority to regulate the bookkeeping methods of your orator, and because the Constitution of the United States did not confer upon the Congress of the United States the right to prescribe the bookkeeping methods of your orator with respect to its intrastate business, and because the Constitution of the United States

103 States did not confer upon the Congress of the United States the power to delegate the authority to the Interstate Commerce Commission, contained in said section 20, and because the Constitution of the United States did not confer upon the Congress of the United States the power to delegate to the Interstate Commerce Commission the right to prescribe any of the bookkeeping methods of your orator, and most especially the power to prescribe the bookkeeping methods of your orator with respect to its intrastate business, and because the requirements contained in said Exhibits A and B are not a regulation of interstate commerce, and because said section 20, if construed as aforesaid, would be in violation of the fifth amendment to the Constitution of the United States in that it would be a taking of your orator's property without compensation and without due process of law; for each, every, and all of which said reasons your orator avers that the attempt of the Interstate Commerce Commission to require your orator to keep its books and all office accounts in accordance with the requirements contained in said Exhibits A and B is an unlawful interference with the business of your orator.

(21) Your orator further avers that said section 20 is also void because in said section 20 it is made a crime for any common carrier subject to the act to keep any accounts, records, or memoranda other than those prescribed or approved by the Interstate Commerce Commission, or to destroy any record or memorandum kept by any common carrier.

(22) Your orator further avers that in said act as amended and in said orders no distinction is made between the accounts, records, 104 and memoranda with respect to intrastate business and accounts, records, and memoranda respecting interstate business, and your orator avers that even if the right to prescribe methods of bookkeeping can be construed as being a regulation of interstate commerce and not a regulation of the internal affairs of a corporation, nevertheless, your orator avers that Congress or the Interstate Commerce Commission is totally without power to prohibit your orator from keeping such accounts, records, and memoranda as it sees fit with respect to its intrastate business, and from prohibiting your orator from so disposing of its records and memoranda with respect to its intrastate business as it may elect.

(23) Your orator further avers that, notwithstanding the said orders of the Interstate Commerce Commission are void, if your orator fails, on the first day of January, 1911, to conform to the requirements contained in said Exhibits A and B, that the said the Interstate Commerce Commission will bring or will cause to be brought against your orator a large number of suits to recover the penalties claimed by it to be due from your orator to the United States because of your orator's failure to comply with the said void orders; that the penalties prescribed in said act for failure to keep the accounts, records, and memoranda as prescribed by the commission is \$500.00 a day for each and every day during the failure to so conform to said requirements, and that the penalties prescribed by said act for destroying any of the memoranda prescribed by said commission, or any other memoranda which a common carrier subject to the act may have, is a fine of not less than \$1,000 or more than \$5,000 105 or imprisonment for a term of not less than one year or more than three years, or both; that the prosecution of your orator for failure to keep your orator's books in accordance with the requirements contained in said Exhibits A and B would be contrary to equity and good conscience and tend to the manifest wrong and injury of your orator.

(24) Your orator therefore prays that upon the filing of this bill a temporary or interlocutory order may be entered herein suspending the said orders and each of them of the said the Interstate Commerce Commission and restraining the said commission from taking any steps or instituting any proceedings to enforce said orders or either of them; and that, upon the final hearing of this cause a decree may be entered herein enjoining, setting aside, annulling, or suspending said orders and each of them of the said Interstate Commerce Commission, and perpetually enjoining the enforcement of said

orders or either of them and perpetually enjoining said commission or its members, their agents, servants, and representatives from enforcing the said orders or either of them and from taking any steps or taking any proceedings toward the enforcement of said orders or either of them.

(25) Your orator further prays that if in the judgment of this honorable court said the Interstate Commerce Commission has the authority to require your orator to keep its books, or any part thereof, in accordance with any of the requirements contained in said orders or either of them, that this court will, upon the final hearing hereof, cause a decree to be entered herein specifically designating such requirements, if any, to which the Interstate
106 Commerce Commission may lawfully require your orator to conform, and enjoining, setting aside, annulling, or suspending the orders and each of them of the said the Interstate Commerce Commission with respect to each and every of the other requirements contained in said Exhibits A and B and perpetually enjoining the enforcement of said orders and each of them with respect to such remaining requirements and each of them and perpetually enjoining said commission, its members, their agents, servants, and representatives from enforcing the said orders or either of them with respect to any or either of said remaining requirements, and from taking any steps or any proceedings toward the enforcement of said orders or either of them with respect to such last mentioned requirements.

And your orator further prays that if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order as prayed for herein, an order may be issued herein suspending said orders and each of them of the said Interstate Commerce Commission and enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory decree prayed for herein.

And your orator prays that such other and further relief be granted in the premises as equity and justice may require.

Your orator prays that your honors may grant unto your orator the writ of subpoena of the United States of America directed to the said the Interstate Commerce Commission, commanding said defendant on a certain day and under a certain penalty, herein to be specified, personally to be and appear before this honorable
107 court and then and there full, true, and complete answer to make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray:

GOODRICH TRANSIT COMPANY,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

R. M. SHAW, *Of Counsel.*

108 STATE OF ILLINOIS,

County of Cook, ss:

Albert W. Goodrich, being first duly sworn, says he is the president of the Goodrich Transit Company, the complainant, and the above and foregoing bill of complaint; that he has read the same and knows the contents thereof and that the said facts as therein stated are true.

ALBERT W. GOODRICH.

Subscribed and sworn to before me this — day of February, A. D. 1911.

[NOTARIAL SEAL.]

FRANK P. PAGE, *Notary Public*.

[Exhibits A and B omitted in printing, per stipulation.]

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Journal entry.

Proceedings of April 18, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,

vs.

INTERSTATE COMMERCE COMMISSION, RESPONDENT.

No. 21.

GOODRICH TRANSIT COMPANY, PETITIONER,

vs.

INTERSTATE COMMERCE COMMISSION, RESPONDENT.

No. 22.

WHITE STAR LINE, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

No. 23.

WHITE STAR LINE, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

No. 24.

Said causes came on for further hearing upon the demurrers and the motions to dismiss the petitions, and the arguments of counsel were continued, Mr. Ralph M. Shaw appearing in behalf of the petitioners and Hon. James A. Fowler in behalf of the United States.

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Journal entry.

Proceedings of April 19, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,

vs.

INTERSTATE COMMERCE COMMISSION, RESPONDENT.

No. 21.

GOODRICH TRANSIT COMPANY, PETITIONER,

vs.

INTERSTATE COMMERCE COMMISSION, RESPONDENT.

No. 22.

WHITE STAR LINE, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

No. 23.

WHITE STAR LINE, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT.

No. 24.

Said causes came on for further hearing on the demurrers and the motions to dismiss the petitions, and the arguments of counsel were

concluded, Hon. James A. Fowler appearing in behalf of the United States and Mr. Ralph M. Shaw appearing in behalf of the petitioners. Thereupon the causes were taken under advisement by the court.

Counsel for the respondent Interstate Commerce Commission granted five days to file brief.

Counsel for the petitioners granted ten days after receipt of brief for respondent within which to file brief.

[Opinion omitted in printing, per stipulation.]

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Order.

Filed and entered October 13, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i> THE INTERSTATE COMMERCE COMMISSION, RESPONDENT; THE United States, intervening respondent.		
GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i> THE INTERSTATE COMMERCE COMMISSION, RESPONDENT; THE United States, intervening respondent.		
WHITE STAR LINE, A CORPORATION, PETITIONER,	}	No. 23.
<i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.		
WHITE STAR LINE, A CORPORATION, PETITIONER,	}	No. 24.
<i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.		

Final decree.

These causes came on to be heard on the 17th, 18th, and 19th days of April, A. D. 1911, on the demurrer of the Interstate Commerce Commission filed on the 30th day of December, A. D. 1910, in cases Nos. 21 and 22, and on motion to dismiss of Interstate Commerce Commission filed on the 21st day of March, A. D. 1911, in cases Nos. 23 and 24, and were argued by counsel, Mr. Ralph M. Shaw appearing for the petitioners, Mr. Charles W. Needham for the Interstate Commerce Commission, and Mr. J. A. Fowler for the United States, he having applied to the court for permission to participate in the argument, as the questions presented on the said demurrers and

motions might be determinative of the cases, and said permission having been granted.

208 It is therefore ordered, adjudged, and decreed that the said demurrers be, and the same are hereby, overruled and the said motions to dismiss be, and the same are hereby, denied; and it further appearing to the court, and it is admitted by counsel for the United States, that under the holding of the court the answers of the United States tender no material issue of fact, and as the Interstate Commerce Commission elects to stand upon the demurrers and motions filed by it, and inasmuch as the adjudication is conclusive of all questions presented, this decree is therefore made final, and the prayers of the petitioners for orders of injunction as prayed for in petition are granted.

It is further ordered, adjudged, and decreed that the orders dated the 31st day of May, A. D. 1910, and the 11th day of June, A. D. 1910, be, and the same are hereby, set aside.

It is further ordered, adjudged, and decreed that the matter be, and the same is hereby, referred to the Interstate Commerce Commission to proceed with according to right and justice.

By the court:

MARTIN A. KNAPP, *Presiding Judge.*

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Assignment of errors.

Filed November 11, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER.

v.

INTERSTATE COMMERCE COMMISSION, RESPONDENT, AND
The United States, intervener.

No. 22.

ASSIGNMENT OF ERRORS.

Come now the Interstate Commerce Commission and the United States, by their counsel, and in connection with their application for appeal file the following assignment of errors, on which they will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered October 13, 1911, in the above-entitled cause.

First. The Commerce Court erred in not dismissing the amended bill for want of equity.

Second. The Commerce Court erred in holding that the Interstate Commerce Commission is not authorized by section 20 of the interstate commerce act to require petitioner to conform to the accounting rules prescribed by the commission which relate to business other

than that conducted partly by it and partly by railroad under a common control, management, or arrangement for a continuous carriage or shipment in interstate commerce, and that in so far as the said accounting rules extend beyond such interstate business of the carriers, or include matters of intrastate traffic and affairs they become invasions of the rights of the petitioner, and to the extent of such invasions are unlawful.

210 Third. The Commerce Court erred in holding that any part of the transactions and business accounts of said petitioner were exempt from the requirements of a uniform system of accounts prescribed by the Interstate Commerce Commission under, and in pursuance of, the authority granted by section 20 of the act to regulate commerce as amended.

Fourth. The Commerce Court therefore erred in not sustaining the motion to dismiss the petition filed by the Interstate Commerce Commission and in granting a perpetual injunction against the enforcement of the order, issued by the said commission on the 31st day of May, 1910, which order is attacked in the petition.

Wherefore the Interstate Commerce Commission and the United States pray that the said final decree of the Commerce Court, entered October 13, 1911, be reversed, annulled, and set aside, and that the said amended bill of complaint be dismissed, and for such other and further order as may be appropriate.

CHAS. W. NEEDHAM,

Solicitor for the Interstate Commerce Commission.

GEO. W. WICKERSHAM,

Attorney General of the United States.

211

Petition for appeal.

Filed November 11, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER.

v.

INTERSTATE COMMERCE COMMISSION, RESPONDENT, AND
The United States, intervener.

No. 22.

PETITION FOR APPEAL.

The Interstate Commerce Commission, respondent, and the United States, intervener, feeling themselves aggrieved by the final decree entered in the above-entitled cause on the 13th day of October, 1911, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the Interstate Commerce Commission and the United States consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the Interstate Commerce Commission, respondent, and the United States, intervener, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Washington, November 11, 1911.

CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.
GEO. W. WICKERSHAM,
Attorney General of the United States.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

212 *Order allowing appeal.*

Filed November 11, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 22.
<i>v.</i>	
INTERSTATE COMMERCE COMMISSION, RESPONDENT, AND The United States, intervener.	

ORDER ALLOWING APPEAL.

In the above-entitled cause, the Interstate Commerce Commission and the United States having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court, entered October 13, 1911, and having at the same time made and filed an assignment of errors, and having in all respects conformed to the statute and the rules of court in such case made and provided:

It is ordered and decreed that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the eleventh day of December, 1911. And the clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings to the Supreme Court of the United States.

November 11, 1911.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Transcript of docket entries.

United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i> THE INTERSTATE COMMERCE COMMISSION, RESPONDENT; THE United States, intervening respondent.	}	No. 22.
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Attorneys: John Barton Payne, Silas H. Strawn, Ralph M. Shaw,
 Garrard B. Winston, for petitioner.

James A. Fowler, for the United States.

Chas. W. Needham, for the Interstate Commerce Commission.

PROCEEDINGS.

1911.

- Mar. 6. All papers filed in U. S. Commerce Court.
- Apr. 3. Ordered that United States be permitted to intervene.
- Apr. 4. Answer of the United States filed.
- Apr. 17. Appearance of Mr. Charles W. Needham for Interstate Commerce Commission filed.
- Apr. 17. Amended bill of complaint, with Exhibits A and B attached, filed.
- Apr. 25. Brief on behalf of Interstate Commerce Commission filed.
- May 5. Brief and argument for petitioner filed.
- Oct. 5. Opinion filed.
- Oct. 13. Order entered overruling demurrers, dismissing motions, and setting aside order of I. C. C.
- Nov. 11. Assignment of errors filed.
- Nov. 11. Petition for appeal filed.
- Nov. 11. Order allowing appeal filed.
- Nov. 20. Citation on appeal filed.

United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i> THE INTERSTATE COMMERCE COMMISSION, RESPONDENT; THE United States, intervening respondent.	}	No. 22.
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UNITED STATES OF AMERICA, *ss.*:

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 213, inclusive) to be a true and complete transcript of the proceedings had of record in the above-entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 24th day of November, A. D. 1911.

[SEAL.]

G. F. SNYDER, *Clerk.*

215 UNITED STATES OF AMERICA, ss:

To Goodrich Transit Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the Interstate Commerce Commission and the United States are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this eleventh day of November, in the year of our Lord one thousand nine hundred and eleven.

MARTIN A. KNAPP.

Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 17th day of November, A. D. 1911.

RALPH M. SHAW, *Sol't. for appellee.*

(Filed. United States Commerce Court. Nov. 20, 1911. G. F. Snyder, clerk.)

216 In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER,
v.

INTERSTATE COMMERCE COMMISSION, RESPONDENT, AND } No. 22.
The United States, intervening respondent.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their respective solicitors, that Exhibits A and B attached to the bill of complaint filed December 29, 1910, in the Circuit Court of the United States for the Northern District of Illinois, and Exhibits A and B attached to the amended petition filed in the United States Commerce Court April 17, 1911, are one and the same and need not be printed in the record in the above-entitled cause, and that sufficient copies thereof shall be furnished to the court for use on the hearing of the appeal, and such copies so furnished may be used to all intents and purposes as though printed in the record.

It is further stipulated and agreed that the opinion of the Commerce Court, filed October 5, 1911, and constituting a part of the record herein, need not be printed, and that for the purposes of the

hearing of the appeal in this case reference may be had to the opinion of the Commerce Court in the record in Goodrich Transit Company v. Interstate Commerce Commission, No. 21, to all intents and purposes as though printed in the record in this case.

Dec. 6, 1911.

RALPH M. SHAW,
Solicitor for Petitioner.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

BLACKBURN ESTERLINE,
For the United States.

217 (Indorsed :) File No., 22956. Supreme Court U. S. October term, 1911. Term No., 880. The Interstate Commerce Commission and The United States, appellants, vs. Goodrich Transit Company. Stipulation to omit portions of the record in printing. Filed December 8, 1911.

(Indorsement on cover :) File No., 22956. United States Commerce Court. Term No., 880. The Interstate Commerce Commission and The United States, appellants, vs. Goodrich Transit Company. Filed December 8th, 1911. File No., 22956.



In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION and The United States, appellants, <i>v.</i> GOODRICH TRANSIT COMPANY.	}	No. 880.
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APPEAL FROM THE UNITED STATES COMMERCE COURT.

MOTION TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and moves the court to advance the above-entitled cause for hearing at this term.

The appeal is from a final order or decree of the Commerce Court entered October 13, 1911, permanently enjoining the enforcement of an order of the Interstate Commerce Commission.

The following questions, among others, are involved:

1. Whether the Interstate Commerce Commission is authorized by section 20 of the act to regulate commerce, as amended, to require Goodrich Transit Company, a water line carrier, to conform to the accounting rules prescribed by the commission which relate to business other than that conducted partly by it and partly by railroad under a common control, manage-

ment, or arrangement for a continuous carriage or shipment in interstate commerce.

2. Whether the accounting rules prescribed by the Interstate Commerce Commission under section 20 of the act to regulate commerce, as amended, which extend beyond such interstate business of common carriers and include matters of intrastate traffic and affairs, become invasions of the rights of the appellee and to the extent of such invasions, are unlawful.

3. Whether any part of the transactions and business accounts of Goodrich Transit Company, a water-line carrier, engaged in interstate commerce, is exempt from the requirements of a uniform system of accounts prescribed by the Interstate Commerce Commission under and in pursuance of section 20 of the act to regulate commerce, as amended.

4. The public interests are involved.

The reports sought by the Interstate Commerce Commission are due on or before July 1 of each year, and unless the opinion and judgment of this court is obtained prior to July 1, 1912, no such reports of common carriers covering business required by the orders will be made until July 1, 1913.

The priority suggested is authorized by section 2 of the act of June 18, 1910 (36 Stat. L., Pt. I, c. 309, p. 542).

Opposing counsel concur.

F. W. LEHMANN,
Solicitor General.

DECEMBER, 1911.

13
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 881.

**THE UNITED STATES AND THE INTERSTATE COM-
MERCE COMMISSION, APPELLANTS,**

vs.

WHITE STAR LINE.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 8, 1911.

(22957)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 881.

THE UNITED STATES AND THE INTERSTATE COM-
MERCE COMMISSION, APPELLANTS,

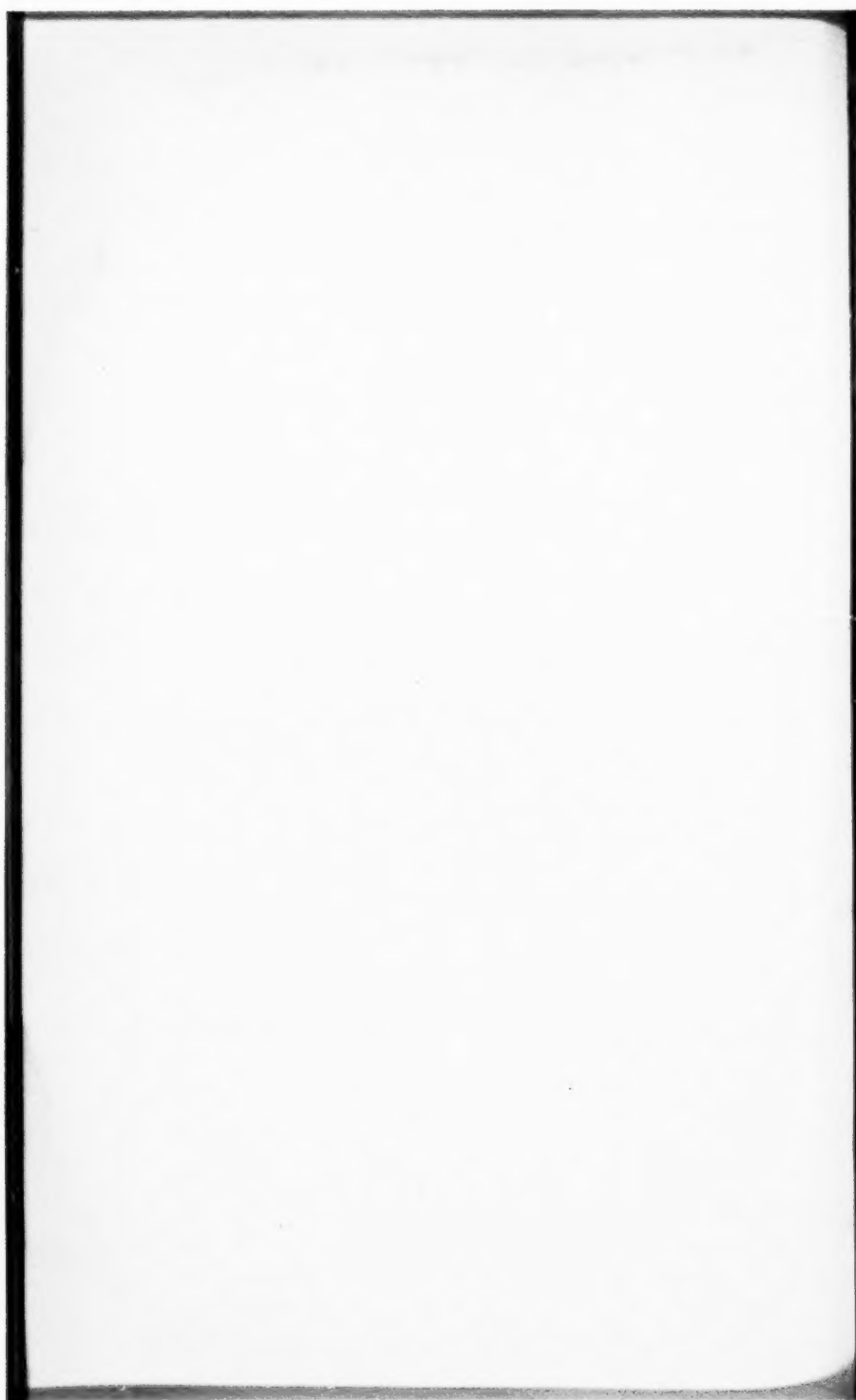
vs.

WHITE STAR LINE.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} No. 23.
<i>vs.</i>	
THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	

UNITED STATES OF AMERICA, *ss.*:

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times herein-after mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition and exhibits.

(Re Classification of operating expenses and revenue.
Filed March 6, 1911.)

1

In the Commerce Court of the United States.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} 23.
<i>vs.</i>	
THE UNITED STATES, DEFENDANT.	

To the honorable the judges of the Commerce Court of the United States:

White Star Line, a corporation organized and existing under and by virtue of the laws of the State of Michigan, brings this its petition against the United States, and thereupon your petitioner avers:

(1) That it, the said White Star Line, is a corporation organized and existing under and by virtue of the laws of the State of Michigan, and that it has its principal operating office in the city of Detroit, in the State of Michigan.

(2) That the Interstate Commerce Commission has been created and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4th, 1887, and acts amendatory thereof and supplementary thereto.

(3) That your petitioner was organized in the year 1896 for the purpose of engaging in the business of maritime commerce or navigation within the State of Michigan or upon the frontier lakes or navigable waters, natural or artificial, connecting therewith; and for buying, selling, holding, leasing, granting, and conveying all
2 real estate, personal or mixed property, for building and using in every manner boats and vessels, with all necessary engines, boilers, machinery, furniture, equipments, and appurtenances, for building and using all vessels, boats, docks, walls, dry docks, warehouses, vehicles, and buildings necessary for carrying on the business and for handling all freights and passengers, and for borrowing whatever money may be necessary, and for doing all acts and exer-

cising all power necessary for the full accomplishment of said purposes. Since the date of the organization of your petitioner it has been engaged in the following business:

1. Your petitioner owns and operates two amusement parks, one at Tashmoo, in the State of Michigan, and one at Sugar Island, in the State of Michigan; and in connection with said parks it owns, operates, and derives revenue from lunch stands, merry-go-rounds, bowling alleys, bath houses, souvenir stands, photograph galleries, boat liveries, and launch ferries; and also your petitioner collects admission fees from people entering said amusement parks.

2. Your petitioner owns and operates steamers which run from Toledo, in the State of Ohio, through Lake Erie, Detroit River, Lake St. Clair, St. Clair River to Port Huron, in the State of Michigan, and which stop to load and unload passengers and freight at some twenty points in the State of Michigan or in the Dominion of Canada between Toledo and Port Huron; that the steamers of this petitioner, operating between Toledo and Port Huron, as aforesaid, do the following business:

3 (a) Said steamers carry for hire passengers and freight originating at ports in the State of Michigan or Ohio and destined to ports in each of the States of Ohio and Michigan. This transportation is entirely by water and unconnected with any land transportation whatever; that is, your petitioner is engaged in "port-to-port" interstate business.

(b) Said steamers carry for hire passengers and freight originating at and destined to ports in the same State, and not passing out of said State en route, that is to say, your orator is engaged in intrastate "port-to-port" business.

(c) Said steamers carry for hire passengers and freight from points in the State of Michigan or Ohio to points in the Dominion of Canada and from points in the Dominion of Canada to points in the State of Michigan or Ohio. This transportation is entirely by water and unconnected with any land transportation whatever; that is, your petitioner is engaged in "port-to-port" international business.

(d) Your petitioner has voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried, under joint tariffs; that for the purpose of establishing such through routes it has voluntarily filed with the Interstate Commerce Commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers; that your petitioner's said steamers carry for hire passengers and freight under said joint tariffs over the water portion of said through routes.

4 (4) Your petitioner avers that not more than one per cent of the revenue derived by your petitioner from its entire business, including its amusement parks and its steamers, is derived from its interstate joint rail and water business, and not more than twenty-four per cent of your petitioner's revenue is derived from its interstate "port-to-port" business.

(5) Your petitioner further avers it has no power of condemnation; that it is subject to the fiercest competition, and that any person, firm, or corporation at any time may compete with your petitioner by placing a boat of any kind or character in service between the ports at which the boats of your petitioner touch and transact business; that no capital of any kind is required to engage in such competitive business except a sufficient amount to build, purchase, or charter a boat and to pay the charges necessary to operate the same.

(6) Your petitioner further avers that heretofore, to wit, on the 31st day of May, 1910, the said the Interstate Commerce Commission, acting under the authority claimed by it to have been conferred upon it by section 20 of the "act to regulate commerce," approved June 16, 1906, entered its two certain orders, which are in words and figures following, to wit:

"At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 31st day of May, 1910.

"Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

"The subject of a uniform system of accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

5 "It is ordered, that the classification of operating revenues of carriers by water, with the text pertaining thereto, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, and embodied in printed form to be hereafter known as first issue, a copy of which is now before this commission, be, and the same is hereby, approved; that a copy thereof, duly authenticated by the secretary of the commission, be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the bureau of statistics and accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

"It is further ordered, that the said classification of operating revenues of carriers by water, with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by water, subject to the provisions of the act to regulate commerce as amended June 29, 1906, in the keeping and recording of their operating revenue accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating revenue accounts in conformity therewith; and that a copy of the said first issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, that the rules contained in the said first issue of the classification of operating revenues of carriers by water are, and by virtue of this order do become, the lawful rules according to which the said operating revenues are defined; that each and every person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier is hereby re-

quired to see to, and under the law is responsible for the correct application of the said rules in the keeping and recording of the operating revenue accounts of any such carrier; and that it shall be un-

lawful for any such carrier or for any receiver or operating
6 trustee of any such carrier or for any person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier to keep any account or record or memorandum of any operating revenue item except in the manner and form in the said first issue set forth and hereby prescribed, and except as hereinafter authorized.

"It is further ordered, that any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account in the said first issue established as may be required for the purposes of any such carrier or of any receiver or operating trustee of any such carrier; or may make assignment of the amount credited to any such primary account to operating divisions, to its individual lines, or to States; provided, however, that a list of such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier be first filed in the office of the bureau of statistics and accounts of this commission subject to disapproval by the commission.

"It is further ordered, that in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said first issue becomes effective, keep and maintain, in addition to the operating revenue accounts hereby prescribed, such portion or portions of its present accounts with respects to operating revenue items as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

"It is further ordered, that any such carrier or any receiver or operating trustee of any such carrier may, in addition to the operating revenue accounts hereby prescribed, keep any temporary or
7 experimental accounts the purpose of which is to develop the efficiency of operations; provided, however, that such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed; and that any such temporary or experimental accounts shall be open to inspection by the commission.

"It is further ordered, that January 1, 1911, be, and is hereby, fixed as the date on which the said first issue shall become effective.

"A true copy:

"EDW. A. MOSELEY, *Secretary.*"

"At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 31st day of May, 1910.

"Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

"The subject of a uniform system of accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

"It is ordered, that the classification of operating expenses of carriers by water with the text pertaining thereto, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, and embodied in printed form to be hereafter known as first issue, a copy of which is now before this commission, be, and the same is hereby, approved; that a copy thereof, duly authenticated by the secretary of the commission, be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the bureau of statistics and accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

8 "It is further ordered, that the said classification of operating expenses of carriers by water, with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by water, subject to the provisions of the act to regulate commerce, as amended June 29, 1906, in the keeping and recording of their operating expense accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating expense accounts in conformity therewith; and that a copy of the said first issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

"It is further ordered, that the rules contained in the said first issue of the classification of operating expenses of carriers by water are, and by virtue of this order do become, the lawful rules according to which the said operating expenses are defined; that each and every person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said rules in the keeping and recording of the operating expense accounts of any such carrier; and that it shall be unlawful for any such carrier or for any receiver or operating trustee of any such carrier or for any person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier to keep any account or record or memorandum of any operating expense item except in the manner and form in the said first issue set forth and hereby prescribed, and except as hereinafter authorized.

"It is further ordered, that any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account in the said first issue established as may be required for the purposes of any such carrier or of any receiver or operating trustee of any such carrier; or may make assignment of the amount charged to any such primary account to operating divisions, to its individual lines, or to States; provided, however, that

a list of such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier be first filed in the office of the bureau of statistics and accounts of this commission subject to disapproval by the commission.

"It is further ordered, that in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the 12 months from the time that the said first issue becomes effective, keep and maintain, in addition to the operating expense accounts hereby prescribed, such portion or portions of its present accounts with respect to operating expense items as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

"It is further ordered, that any such carrier or any receiver or operating trustee of any such carrier may, in addition to the operating expense accounts hereby prescribed, keep any temporary or experimental accounts the purpose of which is to develop the efficiency of operations; provided, however, that such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed; and that any such temporary or experimental accounts shall be open to inspection by the commission.

"It is further ordered, that January 1, 1911, be, and is hereby fixed as the date on which the said first issue shall become effective.

"A true copy:

"EDW. A. MOSELEY, *Secretary.*"

10 (7) Your petitioner avers that thereupon the said the Interstate Commerce Commission caused a copy of each of said orders to be served upon your petitioner and at the same time delivered or caused to be served upon your petitioner two pamphlets, one of which was entitled "The classification of operating revenues by carriers by water, as prescribed by the Interstate Commerce Commission, in accordance with section 20 of the 'act to regulate commerce,'" and the other of which was entitled "Classification of operating expenses of carriers by water, as prescribed by the Interstate Commerce Commission in accordance with section 20 of the 'act to regulate commerce,'" copies of which said pamphlets are attached hereto and made a part hereof, and marked, respectively "Exhibits A and B."

Your petitioner avers that the bookkeeping methods prescribed by the said Interstate Commerce Commission in said Exhibits A and B differ widely from those now in use by your petitioner; and that in order to comply with said requirements contained in said Exhibits A and B it will be necessary for your petitioner to open up a completely new set of books, and to change your petitioner's present methods of accounting, all of which will entail upon your petitioner great annoyance and expense.

(8) Your petitioner avers that the said the Interstate Commerce Commission has notified your petitioner that it will require your petitioner, beginning with the 1st day of January, 1911, to open a new set of books and thereafter to conform to the method of accounting prescribed in said Exhibits A and B with respect to all of its business, including its amusement park business, its intrastate business, its "port-to-port" interstate and international business, and its business as a part of joint routes with rail carriers, as hereinabove referred to; and has notified your petitioner that in the event
11 of its failure to conform its books and methods of accounting to the requirements as prescribed in said Exhibits A and B, that it will be subject to the penalties prescribed in section 20 of the "act to regulate commerce," and will be prosecuted for violation thereof.

(9) Your petitioner further avers that said requirements so made by the said commission upon your petitioner make no distinction between the books which your petitioner may keep and its method of accounting for its income and expenses in connection with its amusement-park business or its intrastate business, its "port-to-port" interstate and international business, and the business which is transacted by your petitioner as the result of the joint rail and water routes to which your petitioner has become a voluntary party, as aforesaid; but your petitioner avers that because of the fact that your petitioner has voluntarily become a party to the joint rail and water routes hereinabove referred to, the said the Interstate Commerce Commission, acting under the pretended authority of section 20, hereinabove referred to, claims and insists that it has the power to prescribe how your petitioner shall keep all of its books of account.

(10) Your petitioner avers that the "act to regulate commerce," as amended in June, 1906, conferred upon the Interstate Commerce Commission the same authority, if any, as it now has with respect to accounting methods, forms, and memoranda of common carriers subject to its jurisdiction, but your petitioner avers that though said authority and duty, if any, as are conferred and imposed upon the commission, were conferred and imposed upon it in June, 1906, that

the said the Interstate Commerce Commission has never prior
12 to the entry of the order herein complained of prescribed or attempted to prescribe any accounting methods or forms with respect to the books of account of water carriers generally, of which your petitioner is one, and that the said the Interstate Commerce Commission has not, since the amendment of June, 1906, up to the entry of the orders of May 31, 1910, hereinabove referred to, attempted to compel your petitioner to keep its books of account in any method whatsoever.

Your petitioner further shows that the Interstate Commerce Commission, on January 7, 1909, in Opinion No. 787, in interpreting the act to regulate commerce and its powers thereunder made the following ruling, to wit:

"That carriers of interstate commerce, by water, are subject to the act to regulate commerce only in respect to traffic transported under

a common control, management, or arrangement with a rail carrier, and in respect to traffic not so transported they are exempted from its provision."

(11) Your petitioner further avers that the said the Interstate Commerce Commission, when it entered the orders herein complained of, did not enter them or either of them because of any duty imposed upon it under and by virtue of any other act of Congress heretofore passed except the "act to regulate commerce," and your petitioner avers that there was no act in existence conferring any authority upon or imposing any duty upon the Interstate Commerce Commission with respect to water carriers, of which your petitioner avers it is one, except the "act to regulate commerce" and the amendments thereto.

(12) Your petitioner avers:

13 (a) That under the Constitution of the United States no power was conferred upon the Congress of the United States to regulate, in any method whatsoever, the internal affairs of any corporation organized under the laws of the State of Michigan or of any other State.

(b) That under the Constitution of the United States no power was conferred upon the Congress of the United States to delegate unto any commission or other subordinate body the right to regulate, in any method whatsoever, the internal affairs of any corporation organized under the laws of the State of Michigan or of any other State.

(c) That such power, if any, as Congress had to pass section 20 of the act regulating commerce, as amended in June, 1906, and as amended in June, 1910, is derived solely from that provision of the Constitution of the United States reading as following: "Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and that under and by virtue of the grant of power contained in the said provision of the Constitution no power was conferred upon the Congress of the United States to regulate any business or commerce which is wholly intrastate; that under and by virtue of the act to regulate commerce as amended the Congress of the United States did not confer or intend to confer upon the Interstate Commerce Commission the right to regulate all or any part of the business of your petitioner which was solely amusement-park business or "port-to-port" business, either international, interstate, or intrastate; that under the terms of the first section of the "act to regulate commerce" as now amended it is provided that "the provisions of this act

14 shall apply to * * * any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or of the District of Columbia to any other State or Territory of the United States or the District of Columbia,

or from one place in a Territory to another place in the same Territory * * * provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or the receiving, delivering, storing, or handling of property wholly within one State and not shipped to or from a foreign country * * *;" that under and by virtue of the provisions aforesaid, all of the business of your petitioner which is not transportation or which is wholly intrastate or wholly "port-to-port" interstate or international business is excluded from the terms of the act; and that it was not the intention of Congress, by the passage of the act, to confer upon the Interstate Commerce Commission the right to prescribe the bookkeeping methods of your petitioner with respect either to its amusement-park business, intrastate business, or the "port-to-port" business of your petitioner.

(13) Your petitioner further avers that it derives its right to exist, its right to elect its officers, to establish its by-laws, its power to make contracts, to bring suit, to collect its debts, and to keep its books of accounts from the State of Michigan and not from the United States or from any legislative enactment of the Congress of the United States; that the power to regulate interstate commerce conferred upon the Congress of the United States does not include the power to regulate or prescribe the method by which the books of a corporation organized under the laws of the State of Michigan should be kept.

15 (14) Your petitioner, while denying that either the Congress of the United States or the Interstate Commerce Commission has any authority of any kind whatsoever over the bookkeeping methods of your petitioner with respect either to its income or its disbursements, shows that such jurisdiction, if any, as the Interstate Commerce Commission has over the bookkeeping methods of your petitioner is limited solely to the bookkeeping methods with respect to the income and disbursements of your petitioner in connection with its joint rail and water business.

Your petitioner shows that the bookkeeping methods prescribed by the Interstate Commerce Commission in said orders, Exhibits A and B, are not reasonably adapted to the purpose of furnishing said Interstate Commerce Commission any information whatsoever with respect to the revenue or disbursements of your petitioner relating to its joint rail and water business; that there is no legitimate relation between said bookkeeping methods and the revenue derived by your petitioner from said source or the disbursements made in connection therewith.

(15) And your petitioner shows that if your petitioner should conform its bookkeeping methods to the rules and requirements established by the said Interstate Commerce Commission in the said orders and should report the same to the said Interstate Commerce Commission, that the information which it would thereby receive would not furnish to it any data whatsoever which would be more accurate than could be obtained by the Interstate Commerce Com-

mission through the bookkeeping methods now in vogue and adopted by your petitioner.

That if your petitioner should conform to the rules and
16 bookkeeping methods sought to be established by the commission as contained in said Exhibits A and B, the said commission would not thereby be enabled to pass upon the justness, lawfulness, or fairness of any existing, proposed, or possible rate, classification, practice, or regulation of your petitioner in connection with its joint rail and water business or in connection with the existence or establishment of any through route, joint classification, or division of rates upon joint rail and water business. And that if your petitioner should conform its bookkeeping methods to the rules and regulations established by the said orders, the Interstate Commerce Commission would not as the result thereof have any better or more accurate information than it now has and that can be obtained from your petitioner's books as they are now kept upon any matter or thing concerning which a complaint may be made under the act to regulate commerce, or concerning which any question may arise under any of the provisions of the act or relating to the enforcement of any of the provisions of the act.

(16) Your petitioner further shows that it is possible to establish a method of bookkeeping by means of which the income and disbursements from the joint rail and water business of your petitioner would be segregated; and that it is not necessary for your petitioner to report or to keep its books as required by the Interstate Commerce Commission in order to furnish all of the information which your petitioner has or can get with respect to its interstate joint rail and water business, and your petitioner charges that the bookkeeping methods prescribed by said orders do not segregate in any
17 manner your petitioner's joint rail and water business from your petitioner's amusement-park business or its interstate or international "port-to-port" business or its intrastate business, and that there is no reasonable relation between the bookkeeping methods required by said Interstate Commerce Commission and the income and disbursements of your petitioner with respect to its joint rail and water business, and that the bookkeeping methods required by the said orders are not reasonably adapted to accomplish any lawful duty imposed upon the Interstate Commerce Commission.

(17) Your petitioner avers that the methods prescribed by the said commission in the said orders are not such as the board of directors of your petitioner, acting under their duties and obligations as such directors, deem prudent, advantageous, and necessary; and said orders, if enforced, will disable the directors in performing their duties in this respect in connection with the amusement park, intrastate, and interstate and international "port to port" business of your petitioner, as well as with respect to its joint rail and water business.

That the entry of said orders was a legislative act and was neither an administrative or judicial function.

(18) Your petitioner further avers that under the Constitution of the United States the power was not conferred upon the Congress of the United States to require your petitioner to keep its books in accordance with the requirements and rules contained in Exhibits A and B hereto attached. Your petitioner therefore avers that the orders of the Interstate Commerce Commission of May 31, 1910, are void for the following reasons:

a. Because the rules and regulations prescribed in said Exhibits A and B are not a regulation of interstate commerce but are a regulation of the internal affairs of a corporation of the State of Michigan.

b. Because Congress was without power to establish such rules and regulations itself.

c. Because Congress was without power to delegate such authority to the Interstate Commerce Commission.

d. Because the Congress did not have power to delegate its legislative power.

e. Because Congress did not delegate such power or authority to the Interstate Commerce Commission.

f. Because said bookkeeping methods are not reasonably adapted to the performance of any lawful duty imposed by the act to regulate commerce on the Interstate Commerce Commission, and because there is no legitimate relation between said orders and commerce between the States, or facilities and instrumentalities for carrying on the same.

g. Because the right of your petitioner to keep its books in such a manner and in accordance with such rules that seems to it appropriate is a property right and the deprivation of your petitioner's right to keep its books in such a manner as seems to it most appropriate is a taking from your petitioner of your petitioner's property without compensation and without due process of law in violation of the fifth amendment to the Constitution of the United States.

(19) Your petitioner further avers that if section 20 of the "act to regulate commerce" as amended should be construed as conferring upon the Interstate Commerce Commission the right to require your petitioner to keep its books in accordance with the requirements contained in Exhibits A and B hereto attached, then your petitioner avers that said section 20 of the "act to regulate commerce," and especially that part thereof which shall be construed as conferring upon the commission the right to prescribe the requirements contained in said Exhibits A and B are void for the reason that the Constitution of the United States did not confer upon the Congress the authority to regulate the bookkeeping methods of your petitioner, and because the Constitution of the United States did not confer upon the Congress of the United States the right to prescribe the bookkeeping methods of your petitioner with respect to its amusement park and intrastate business, and because the Constitution of the United States did not confer upon the Congress of the United States the power to delegate the authority to the Interstate

Commerce Commission contained in said section 20, and because the Constitution of the United States did not confer upon the Congress of the United States the power to delegate to the Interstate Commerce Commission the right to prescribe any of the bookkeeping methods of your petitioner, and most especially the power to prescribe the bookkeeping methods of your petitioner with respect to its amusement park and intrastate business, and because the requirements contained in said Exhibits A and B are not a regulation of interstate commerce, and because said section 20, if construed as aforesaid, would be in violation of the fifth amendment to the Constitution of the United States in that it would be a taking of your petitioner's property without compensation and without due process of law; for each, every, and all of which said reasons your petitioner avers that the attempt of the Interstate Commerce Commission to require your
20 petitioner to keep its books and all office accounts in accordance with the requirements contained in said Exhibits A and B is an unlawful interference with the business of your petitioner.

(20) Your petitioner further avers that said section 20 is also void, because in said section 20 it is made a crime for any common carrier subject to the act to keep any accounts, records, or memoranda other than those prescribed or approved by the Interstate Commerce Commission, or to destroy any record or memorandum kept by any common carrier.

(21) Your petitioner further avers that in said act, as amended, and in said orders no distinction is made between the accounts, records, and memoranda with respect to amusement park or intrastate business and accounts, records, and memoranda respecting interstate business, and your petitioner avers that even if the right to prescribe methods of bookkeeping can be construed as being a regulation of interstate commerce and not a regulation of the internal affairs of a corporation, nevertheless, your petitioner avers that Congress or the Interstate Commerce Commission are totally without power to prohibit your petitioner from keeping such accounts, records, and memoranda as it sees fit with respect to its amusement park or its intrastate business, and to prohibit your petitioner from so disposing of its records and memoranda with respect to its amusement park or its intrastate business as it may elect.

(22) Your petitioner further avers that, notwithstanding the said orders of the Interstate Commerce Commission are void, if your petitioner fails to conform to the requirements contained in said Exhibits A and B the Interstate Commerce Commission will bring or will cause to be brought against your petitioner a large number
21 of suits to recover the penalties claimed by it to be due from your petitioner to the United States because of your petitioner's failure to comply with the said void orders; that the penalties prescribed in said act for failure to keep the accounts, records, and memoranda as prescribed by the commission is \$500.00 a day for each and every day during the failure to so conform to

said requirements, and that the penalties prescribed by said act for destroying any of the memoranda prescribed by said commission, or any other memoranda which a common carrier subject to the act may have, is a fine of not less than \$1,000 or more than \$5,000 or imprisonment for a term of not less than one year or more than three years, or both; that the prosecution of your petitioner for failure to keep your petitioner's books in accordance with the requirements contained in said Exhibits A and B would be contrary to equity and good conscience and tend to the manifest wrong and injury of your petitioner.

(23) Your petitioner therefore prays that upon the filing of this bill a temporary or interlocutory order may be entered herein suspending the said orders, and each of them, of the said the Interstate Commerce Commission and restraining the said commission from taking any steps or instituting any proceedings to enforce said orders, or either of them, and that upon the final hearing of this cause a decree may be entered herein enjoining, setting aside, annulling, or suspending said orders, and each of them, of the said Interstate Commerce Commission and perpetually enjoining the enforcement of said orders, or either of them, and perpetually enjoining said commission and its members, their agents, servants, and representatives from enforcing the said orders, or either of them, and
22 from taking any steps or taking any proceedings toward the enforcement of said orders, or either of them.

(24) Your petitioner further prays that if in the judgment of this honorable court said the Interstate Commerce Commission has the authority to require your petitioner to keep its books, or any part thereof, in accordance with any of the requirements contained in said orders, or either of them, that this court will, upon the final hearing hereof, cause a decree to be entered herein specifically designating such requirements, if any, to which the Interstate Commerce Commission may lawfully require your petitioner to conform and enjoining, setting aside, annulling, or suspending the orders, and each of them, of the said the Interstate Commerce Commission with respect to each and every of the other requirements contained in said Exhibits A and B and perpetually enjoining the enforcement of said orders, and each of them, with respect to such remaining requirements, and each of them, and perpetually enjoining said commission, its members, their agents, servants, and representatives from enforcing the said orders, or either of them, with respect to any or either of said remaining requirements and from taking any steps or any proceedings toward the enforcement of said orders, or either of them, with respect to such last-mentioned requirements.

(25) And your petitioner further prays that if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order, as prayed for herein, an order may be issued herein suspending said orders, and each of them, of the said Interstate Commerce Commission and enjoining the enforcement thereof

23 until the hearing and final determination of the application for the temporary or interlocutory decree prayed for herein.

And your petitioner prays that such other and further relief be granted in the premises as equity and justice may require.

(26) Your petitioner prays that your honors will forthwith cause a copy of this petition to be served by the marshal or deputy marshal of this court or by the proper United States marshal or deputy marshal upon the United States by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice and that the defendant, the United States, be commanded on a certain day and under a certain penalty therein to be specified personally to be and appear in this honorable court and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your petitioner will ever pray, etc.

WHITE STAR LINE,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

24 STATE OF MICHIGAN,
County of Wayne, ss:

L. C. Waldo, being first duly sworn, says that he is the president of White Star Line, complainant in the above-entitled cause; that he knows the facts stated in the above and foregoing bill of complaint; and that the said facts are true.

L. C. WALDO.

Subscribed and sworn to before me this 24th day of February, A. D. 1911.

[NOTARIAL SEAL.]

GEORGE S. PHILLIPS,
Notary Public.

[Exhibits A and B omitted in printing, per stipulation.]

70

(Original.)

In the United States Commerce Court.

WHITE STAR LINE, PETITIONER,	} No. 23.
<i>vs.</i>	
THE UNITED STATES, RESPONDENT.	

The President of the United States to Honorable George W. Wickersham as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 14th day of March, A. D. 1911.

G. F. SNYDER, *Clerk*.

Served on me at 3.15 p. m., March 14, 1911, by Mr. Starek, marshal.

BLACKBURN ESTERLINE.

71

(Duplicate.)

In the United States Commerce Court.

WHITE STAR LINE, PETITIONER,	} No. 23.
<i>vs.</i>	
THE UNITED STATES, RESPONDENT.	

The President of the United States to Edward A. Moseley as secretary of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this fifteenth day of March, A. D. 1911.

G. F. SNYDER, *Clerk*.

Original of above notice and copy of petition served upon Edward A. Moseley, secretary of the Interstate Commerce Commission, this 15th day of March, A. D. 1911. (Accepted by W. H. Connelly.)

F. J. STAREK, *Marshal*.

72 *Appearance of Interstate Commerce Commission, and P. J. Farrell as its solicitor.*

Filed March 20, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,	} In Equity. No. 23.
<i>vs.</i>	
THE UNITED STATES.	

APPEARANCE.

To Mr. G. F. Snyder, clerk of said court:

I hereby enter herein the appearance of the Interstate Commerce Commission as a party respondent, and of myself as its solicitor.

Dated March 20, 1911.

P. J. FARRELL,

*Solicitor for the Interstate
Commerce Commission, Respondent.*

73 *Motion of Interstate Commerce Commission to dismiss.*

Filed March 21, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,	} In Equity. No. 23.
v.	
THE UNITED STATES.	

MOTION TO DISMISS.

Comes now the Interstate Commerce Commission, one of the parties respondent in the above-entitled suit, by its solicitor, and moves this honorable court to dismiss the petition of the above-named petitioner, and in support of said motion shows:

That the allegations contained and the facts set forth in said petition are not sufficient to entitle said petitioner to the relief, or any of the relief, prayed for by said petitioner in and by its said petition.

Dated March 21, 1911.

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL,
Its Solicitor.

74

Notice.

Filed March 25, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,	} In Equity. No. 23.
v.	
THE UNITED STATES.	

NOTICE.

To Messrs. Winston, Payne, Strawn, and Shaw, solicitors for the above-named petitioner.

Please take notice that I have to-day entered herein the appearance of the Interstate Commerce Commission as a party respondent, and of myself as its solicitor.

Dated March 20, 1911.

P. J. FARRELL,
*Solicitor for Interstate
Commerce Commission, Respondent.*

We hereby accept service of the above notice this 23rd day of March, 1911.

WINSTON, PAYNE, STRAWN, AND SHAW,
Solicitors for White Star Line, Petitioner.

75

Journal-entry.

Proceedings of April 3, 1911.

WHITE STAR LINE, PETITIONER,	} No. 23.
<i>vs.</i>	
UNITED STATES, RESPONDENT.	

WHITE STAR LINE, PETITIONER,	} No. 24.
<i>vs.</i>	
UNITED STATES, RESPONDENT.	

Upon request of counsel, said causes were assigned for argument, with numbers twenty-one and twenty-two, on Wednesday, April 12, 1911, after number fifteen.

76

Answer of the United States.

Filed April 4, 1911.

In the United States Commerce Court.

April term, 1911.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} No. 23.
<i>v.</i>	
THE UNITED STATES.	

ANSWER OF DEFENDANT THE UNITED STATES.

The defendant The United States, for answer to the petition filed against it in this cause, says:

I.

It admits each and every allegation of fact contained therein except as follows:

First. While it admits that petitioner is the owner of an amusement park at Tashmoo, in the State of Michigan, and also one at Sugar Island, in the State of Michigan, and in connection therewith operates the various devices for amusement described in the first paragraph of the petition, yet it alleges that said parks and said devices constitute a part of petitioner's general property and are operated in connection with and for the purpose of promoting its interstate business and bear a material and substantial relationship to said business.

77 Second. Defendant denies that not more than 1 per cent of the revenue received by petitioner from its entire business is derived from its interstate joint rail and water business and not more than 24 per cent from its interstate port-to-port business.

It avers that it derives a much larger proportion of its entire receipts from such business; but as petitioner has voluntarily subjected itself to the provisions of the interstate commerce law of the United States it deems it wholly immaterial what the proportion between the revenues derived from its various sources of income is.

Third. It denies that the bookkeeping methods prescribed by the Interstate Commerce Commission in the orders set forth in the petition and exhibits thereto are not reasonably adapted to the purpose of furnishing said commission with any information with respect to the revenue or disbursements of petitioner in connection with its joint rail and water business; or that there is no legitimate relation between said methods and the revenue derived by petitioner from said source, or the disbursements made in connection therewith; or that if petitioner should comply with said orders, the information which the commission would receive would not furnish to it any data which would be more accurate than could be obtained through the bookkeeping methods now used by petitioner; or that if petitioner should conform to said methods, the commission would not thereby

78 be enabled to pass upon the justness, lawfulness, or fairness of any existing, proposed, or possible rate, classification, or practice of petitioner in connection with its joint rail and water business, or in connection with the existence or establishment of any through route, joint classification, or division of rates upon its joint rail and water business; or that the commission would not thereby have any better or more accurate information than it now has and can be obtained from petitioner's books as now kept upon any matter concerning which a complaint may be made or a question arise before the commission under the acts to regulate commerce.

The method devised by the commission, and which it has ordered petitioner to adopt, is the result of long experience and careful investigation, and is the one best adapted to the formulation and preservation of accurate data for the information of the commission in the performance of the duties imposed upon it by acts of Congress.

Fourth. Defendant denies that it is possible to establish a method of bookkeeping by which the income and disbursements from the joint rail and water business of petitioner would be segregated, or that it is unnecessary for petitioner to report or keep its books as required by the Interstate Commerce Commission in order to furnish all the information which petitioner has or can get with respect to its interstate joint rail and water business; or that there is no reasonable relation between the bookkeeping methods required by the commission and the income and disbursements of petitioner with respect to its

79 joint rail and water business; or that the bookkeeping methods required by said orders are not reasonably adapted to accomplish any lawful duty imposed upon the commission; or that the enforcement of said orders will disable the directors in performing their duties in connection with its amusement parks, intrastate, interstate, and international port-to-port business, as well as with respect to its joint rail and water business.

It is true that the method of bookkeeping prescribed does not undertake to segregate the joint rail and water business of petitioner from its amusement park, intrastate, interstate, and international port-to-port business. In fact, while the income from the different kinds of business stated can with reasonable accuracy be ascertained, yet

defendant denies that it is possible to determine with any substantial degree of accuracy the expenses incurred in either of said kinds of business as separate and distinct from the others; and, furthermore, it is essential, as heretofore stated, for the commission to be informed as to the total income derived by petitioner from all of its investments, and from all sources, in order that the commission may determine what are reasonable and just rates to be charged by petitioner in its joint rail and water business, and to determine whether or not it is in all respects complying with the provisions of the laws of the United States regulating interstate commerce; and the relationship between such information and the proper regulation of petitioner's interstate traffic is the most vital, material, and substantial.

80

II.

While defendant admits all other allegations of fact contained in the petition, yet it does not admit, but denies, all inferences of fact from particular facts alleged, and all conclusions of law insisted upon in the petition.

And now, having fully answered, defendant prays to be hence dismissed.

GEO. W. WICKERSHAM,
Attorney General of the United States.

J. A. FOWLER,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

APRIL, 1911.

81

Journal entry.

Proceedings of April 11, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	}	No. 22.
<i>vs.</i>		
GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 23.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	}	No. 24.
<i>vs.</i>		
WHITE STAR LINE, PETITIONER,	}	No. 25.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.	}	No. 26.
<i>vs.</i>		
WHITE STAR LINE, PETITIONER,	}	No. 27.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.	}	No. 28.
<i>vs.</i>		

Upon request of counsel the hearing of said causes was postponed until Monday, April 17, 1911.

Appearance of Charles W. Needham.

Filed April 17, 1911.

APRIL 17, 1911.

The CLERK OF THE UNITED STATES COMMERCE COURT,
Washington, D. C.

SIR: Please enter my appearance as attorney for the Interstate
 Commerce Commission in Nos. 21, 22, 23, and 24.

Very respty.,

CHAS. W. NEEDHAM.

Journal entry.

Proceedings of April 17, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 21.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	

GOODRICH TRANSIT COMPANY, PETITIONER,	} No. 22.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	

WHITE STAR LINE, PETITIONER,	} No. 23.
<i>vs.</i>	
THE UNITED STATES, RESPONDENT.	

WHITE STAR LINE, PETITIONER,	} No. 24.
<i>vs.</i>	
THE UNITED STATES, RESPONDENT.	

Said causes came on for hearing on the demurrers in numbers 21 and 22 and the motions to dismiss in numbers 23 and 24 and the arguments of counsel were commenced, Mr. Charles W. Needham appearing in behalf of the Interstate Commerce Commission and Mr. Ralph M. Shaw in behalf of the petitioners.

Petitioners were given leave to file amended bills in numbers 21 and 22 with the understanding that the demurrers of the Interstate Commerce Commission interposed to the original bills stand as demurrers to the amended bills.

84

Journal entry.

Proceedings of April 18, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 21.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		
GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 22.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		
WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 23.
THE UNITED STATES, RESPONDENT.		
WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 24.
THE UNITED STATES, RESPONDENT.		

Said causes came on for further hearing upon the demurrers and the motions to dismiss the petitions and the arguments of counsel were continued, Mr. Ralph M. Shaw appearing in behalf of the petitioners and Hon. James A. Fowler in behalf of the United States.

85

Journal entry.

Proceedings of April 19, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 21.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		
GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	}	No. 22.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		
WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 23.
THE UNITED STATES, RESPONDENT.		
WHITE STAR LINE, PETITIONER, <i>vs.</i>	}	No. 24.
THE UNITED STATES, RESPONDENT.		

Said causes came on for further hearing on the demurrers and the motions to dismiss the petitions and the arguments of counsel were concluded, Hon. James A. Fowler appearing in behalf of the United States and Mr. Ralph M. Shaw appearing in behalf of the petitioners. Thereupon the causes were taken under advisement by the court.

Counsel for the respondent, Interstate Commerce Commission, granted five days to file brief.

Counsel for the petitioners granted ten days after receipt of brief for respondent within which to file brief.

[Opinion omitted in printing, per stipulation.]

137

Order.

Filed and entered October 13, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>v.</i> THE INTERSTATE COMMERCE COMMISSION, RESPONDENT; THE United States, intervening respondent.	} No. 21.
GOODRICH TRANSIT COMPANY, PETITIONER, <i>v.</i> THE INTERSTATE COMMERCE COMMISSION, RESPONDENT; THE United States, intervening respondent.	
WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	} No. 22.
WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	
WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	} No. 23.
WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	
WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	} No. 24.
WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i> THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	

FINAL DECREE.

These causes came on to be heard on the 17th, 18th, and 19th days of April, A. D. 1911, on the demurrer of the Interstate Commerce Commission filed on the 30th day of December, A. D. 1910, in cases Nos. 21 and 22, and on motion to dismiss of Interstate Commerce Commission filed on the 21st day of March, A. D. 1911, in cases Nos. 23 and 24, and were argued by counsel, Mr. Ralph M. Shaw appearing for the petitioners, Mr. Charles W. Needham for the Interstate Commerce Commission, and Mr. J. A. Fowler for the United States, he having applied to the court for permission to participate in the argument, as the questions presented on the said demurrers and motions might be determinative of the cases, and said permission having been granted.

128 It is therefore ordered, adjudged, and decreed that the said demurrers be, and the same are hereby, overruled and the said motions to dismiss be, and the same are hereby, denied; and it further appearing to the court and it is admitted by counsel for the United States that under the holding of the court the answers of the United States tender no material issue of fact, and as the Interstate Commerce Commission elects to stand upon the demurrers and motions filed by it, and inasmuch as the adjudication is conclusive of all questions presented, this decree is therefore made final, and the

prayers of the petitioners for orders of injunction as prayed for in petition are granted.

It is further ordered, adjudged, and decreed that the orders dated the 31st day of May, A. D. 1910, and the 11th day of June, A. D. 1910, be, and the same are hereby, set aside.

It is further ordered, adjudged, and decreed that the matter be, and the same is hereby, referred to the Interstate Commerce Commission to proceed with according to right and justice.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

139

Assignment of errors.

Filed November 11, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,	} No. 23.
petitioner,	
v.	
THE UNITED STATES, RESPONDENT, and the Interstate Commerce Commission, intervenor.	

ASSIGNMENT OF ERRORS.

Come now the United States and the Interstate Commerce Commission, by their counsel, and in connection with their application for appeal file the following assignment of errors on which they will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered October 13, 1911, in the above entitled cause.

First. The Commerce Court erred in not dismissing the petition for want of equity.

Second. The Commerce Court erred in holding that the Interstate Commerce Commission is not authorized by section 20 of the interstate commerce act to require petitioner to conform to the accounting rules prescribed by the commission which relate to business other than that conducted partly by it and partly by railroad under a common control, management, or arrangement for a continuous carriage or shipment in interstate commerce, and that in so far as the said accounting rules extend beyond such interstate business of the carriers, or include matters of intrastate traffic and affairs they become invasions of the rights of the petitioner, and to the extent of such invasions are unlawful.

Third. The Commerce Court erred in holding that any part of the transactions and business accounts of said petitioner were exempt from the requirements of a uniform system of accounts prescribed by the Interstate Commerce Commission under,

and in pursuance of, the authority granted by section 20 of the act to regulate commerce as amended.

Fourth. The Commerce Court therefore erred in not sustaining the motion to dismiss the petition filed by the Interstate Commerce Commission and in granting a perpetual injunction against the enforcement of the order issued by the said commission on the 31st day of May, 1910, which order is attacked in the petition.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered October 13, 1911, be reversed, annulled, and set aside, and that the petition of the petitioner be dismissed, and for such other and further order as may be appropriate.

GEO. W. WICKERSHAM,

Attorney General of the United States.

CHAS. W. NEEDHAM,

Solicitor for the Interstate Commerce Commission.

141

Petition for appeal.

Filed November 11, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,

v.

THE UNITED STATES, RESPONDENT, AND THE INTERSTATE
Commerce Commission, intervener.

No. 23.

PETITION FOR APPEAL.

The United States, respondent, and the Interstate Commerce Commission, intervener, feeling themselves aggrieved by the final decree entered in the above-entitled cause on the 13th day of October, 1911, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervener, further pray that transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Washington, November 11, 1911.

GEO. W. WICKERSHAM,

Attorney General of the United States.

CHAS. W. NEEDHAM,

Solicitor for the Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

142

Order allowing appeal.

Filed November 11, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} No. 23.
<i>v.</i>	
THE UNITED STATES, RESPONDENT, AND THE INTERSTATE Commerce Commission, intervener.	

ORDER ALLOWING APPEAL.

In the above-entitled cause, the United States and the Interstate Commerce Commission having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered October 13, 1911, and having at the same time made and filed an assignment of errors, and having in all respects conformed to the statute and the rules of court in such case made and provided:

It is ordered and decreed that the said appeal be, and the same is hereby, allowed, as prayed and made returnable on the eleventh day of December, 1911. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 11, 1911.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

143

Transcript of docket entries.

United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} No. 23.
<i>vs.</i>	
THE UNITED STATES, RESPONDENT; THE INTERSTATE COM- merce Commission, intervening respondent.	

Attorneys: John Barton Payne, Silas H. Strawn, Ralph M. Shaw, Gerrard B. Winston, for petitioner.

James A. Fowler, for the United States.

Chas. W. Needham, P. J. Farrell, for the Interstate Commerce Commission.

PROCEEDINGS.

1911.

- Mar. 6. Petition filed in U. S. Commerce Court.
- Mar. 14. Copy of petition served on Attorney General of the United States.
- Mar. 15. Copy of petition served on secretary of Interstate Commerce Commission.
- Mar. 20. Appearance of I. C. C., as party respondent, and of Mr. P. J. Farrell, as its solicitor, filed.
- Mar. 21. Motion of Interstate Commerce Commission, by its solicitor, to dismiss petition, filed.
- Mar. 25. Notice to solicitors for petitioner of appearance of Interstate Commerce Commission as a party respondent, and of Mr. P. J. Farrell, as its solicitor, filed.
- Apr. 4. Answer of the United States filed.
- Apr. 17. Appearance of Mr. Charles W. Needham for Interstate Commerce Com'n filed.
- Apr. 25. Brief on behalf of Interstate Commerce Commission filed.
- May 5. Brief and argument for petitioner filed.
- Oct. 5. Opinion filed.
- Oct. 13. Order entered overruling demurrers, dismissing motions, and setting aside order of I. C. C.
- Nov. 11. Assignment of errors filed.
- Nov. 11. Petition for appeal filed.
- Nov. 11. Order allowing appeal filed.
- Nov. 20. Citation on appeal filed.

144

United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT; THE INTERSTATE COM-
merce Commission, intervening respondent.

} No. 23.

UNITED STATES OF AMERICA, ss:

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 143, inclusive) to be a true and complete transcript of the proceedings had of record in the above-entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 24th day of November, A. D. 1911.

[SEAL.]

G. F. SNYDER, *Clerk.*

145 UNITED STATES OF AMERICA, ss:

To White Star Line, a corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court wherein the United States and the Interstate Commerce Commission are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal

mentioned, should not be corrected and why speedy justice should not be done to parties in that behalf.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this eleventh day of November, in the year of our Lord one thousand nine hundred and eleven.

MARTIN A. KNAPP,

Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 17th day of November, A. D. 1911.

RALPH M. SHAW,

Solr. for Appellee.

146

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,
petitioner,

v.

THE UNITED STATES, RESPONDENT,
and Interstate Commerce Com-
mission, intervening respondent.

No. 23.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their respective solicitors, that Exhibits A and B attached to the petition filed March 6, 1911, in the Commerce Court are the same as Exhibits A and B attached to the original bill of complaint in Goodrich Transit Company v. Interstate Commerce Commission, No. 22, and are the same as Exhibits A and B attached to the amended petition in No. 22, and need not be printed in the record in the above-entitled cause; and that the copies of the said exhibits furnished for use in the hearing of the appeal in No. 22 may also be used on the hearing of the appeal of this case to all intents and purposes as though printed in the record herein.

It is further stipulated and agreed that the opinion of the Commerce Court filed October 5, 1911, and constituting part of the record herein, need not be printed, and that for the purposes of the hearing of the appeal in this case reference may be had to the opinion of the Commerce Court in Goodrich Transit Company v. Interstate Commerce Commission, No. 21, to all intents and purposes as though printed in the record in this case.

Dec. 6, 1911.

RALPH M. SHAW,

Solicitor for Petitioner.

BLACKBURN ESTERLINE,

For the United States.

CHAS. W. NEEDHAM,

Solicitor for Interstate Commerce Commission.

147 (Indorsed:) File No. 22957. Supreme Court U. S. October Term, 1911. Term No., 881. The United States and The Interstate Commerce Commission, appellants, vs. White Star Line Stipulation to omit portions of the record in printing. Filed December 8, 1911.

(Indorsement on cover:) File No. 22957. United States Commerce Court. Term No., 881. The United States and The Interstate Commerce Commission, appellants, vs. White Star Line. Filed December 8th, 1911. File No. 22957.



In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES AND THE INTERSTATE Commerce Commission, appellants, v. WHITE STAR LINE.	} No. 881.
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APPEAL FROM THE UNITED STATES COMMERCE COURT.

MOTION TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and moves the court to advance the above-entitled cause for hearing at this term.

The appeal is from a final order or decree of the Commerce Court entered October 13, 1911, permanently enjoining the enforcement of an order of the Interstate Commerce Commission.

The following questions, among others, are involved:

1. Whether the Interstate Commerce Commission is authorized by section 20 of the act to regulate commerce, as amended, to require White Star Line, a water-line carrier, to conform to the accounting rules prescribed by the commission which relate to business other than that conducted partly by it and

partly by railroad under a common control, management, or arrangement for a continuous carriage or shipment in interstate commerce.

2. Whether the accounting rules prescribed by the Interstate Commerce Commission under section 20 of the act to regulate commerce, as amended, which extend beyond such interstate business of common carriers and include matters of intrastate traffic and affairs become invasions of the rights of the appellee and to the extent of such invasions are unlawful.

3. Whether any part of the transactions and business accounts of White Star Line, a water-line carrier, engaged in interstate commerce, is exempt from the requirements of a uniform system of accounts prescribed by the Interstate Commerce Commission under and in pursuance of section 20 of the act to regulate commerce, as amended.

4. The public interests are involved.

The reports sought by the Interstate Commerce Commission are due on or before July 1 of each year, and unless the opinion and judgment of this court are obtained prior to July 1, 1912, no such reports of common carriers covering business required by the orders will be made until July 1, 1913.

The priority suggested is authorized by section 2 of the act of June 18, 1910 (36 Stat. L., Pt. I, c. 309, p. 542).

Opposing counsel concur.

F. W. LEHMANN,
Solicitor General.

DECEMBER, 1911.

13
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 882.

**THE UNITED STATES AND THE INTERSTATE COM-
MERCE COMMISSION, APPELLANTS,**

vs.

WHITE STAR LINE.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 8, 1911.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 882.

THE UNITED STATES AND THE INTERSTATE COM-
MERCE COMMISSION, APPELLANTS,

vs.

WHITE STAR LINE.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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a United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} No. 24.
vs.	
THE UNITED STATES, RESPONDENT;	
THE INTERSTATE COMMERCE COMMISSION, intervening respondent.	

UNITED STATES OF AMERICA, ss:

Be it remembered, that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition and exhibits.

(Re Special Report Series, Circular No. 10.)

Filed March 6, 1911.

1 IN THE COMMERCE COURT OF THE UNITED STATES.

WHITE STAR LINE, A CORPORATION, PETITIONER,	}
vs.	
THE UNITED STATES, DEFENDANT.	

To the Honorable the Judges of the Commerce Court of the United States:

White Star Line, a corporation organized and existing under and by virtue of the laws of the State of Michigan, brings this its petition against the United States, and thereupon your petitioner avers:

(1) That it, the said White Star Line, is a corporation organized and existing under and by virtue of the laws of the State of Michigan, and that it has its principal operating office in the city of Detroit, in the State of Michigan.

(2) That the Interstate Commerce Commission has been created and now exists under and by virtue of an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

(3) That your petitioner was organized in the year 1896 for the purpose of engaging in the business of maritime commerce or navigation within the State of Michigan or upon the frontier lakes or navigable waters, natural or artificial, connecting therewith; and for buying, selling, holding, leasing, granting, and conveying all real estate, personal or mixed property, for building and using in every manner boats and vessels with all necessary engines, boilers, machinery, furniture, equipments, and appurtenances, for building and using all vessels, boats, docks, walls, dry docks, ware-

houses, vehicles, and buildings necessary for carrying on the business and for handling all freights and passengers, and for borrowing whatever money may be necessary, and for doing all acts and exercising all power necessary for the full accomplishment of said purposes. Since the date of the organization of your petitioner it has been engaged in the following business:

1. Your petitioner owns and operates two amusement parks, one at Tashmoo, in the State of Michigan, and one at Sugar Island, in the State of Michigan, and in connection with said parks it owns, operates, and derives revenue from lunch stands, merry-go-rounds, bowling alleys, bath houses, souvenir stands, photograph galleries, boat liveries, and launch ferries; and also your petitioner collects admission fees from people entering said amusement parks.

2. Your petitioner owns and operates steamers which run from Toledo, in the State of Ohio, through Lake Erie, Detroit River, Lake St. Clair, St. Clair River, to Port Huron, in the State of Michigan, and which stop to load and unload passengers and freight at some twenty points in the State of Michigan or in the Dominion of Canada between Toledo and Port Huron; that the steamers of this petitioner operating between Toledo and Port Huron as aforesaid do the following business:

(a) Said steamers carry for hire passengers and freight originating at ports in the State of Michigan or Ohio and destined to ports in each of the States of Ohio and Michigan. This transportation is entirely by water and unconnected with any land transportation whatever; that is, your petitioner is engaged in "port to port" interstate business.

(b) Said steamers carry for hire passengers and freight originating at and destined to ports in the same State, and not passing out of said State en route, that is to say: Your orator is engaged in intrastate "port to port" business.

(c) Said steamers carry for hire passengers and freight from points in the State of Michigan or Ohio to points in the Dominion of Canada and from points in the Dominion of Canada to points in the State of Michigan or Ohio. This transportation is entirely by water and unconnected with any land transportation whatever; that is, your petitioner is engaged in "port to port" international business.

(d) Your petitioner has voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried, under joint tariffs; that for the purpose of establishing such through routes, it has voluntarily filed with the Interstate Commerce Commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers; that your petitioner's said steamers carry for hire passengers and freight under said joint tariffs over the water portion of said through routes.

(4) Your petitioner avers that not more than one per cent. of the revenue derived by your petitioner from its entire business, includ-

ing its amusement parks and its steamers, is derived from its interstate joint rail and water business and not more than 24
4 per cent. of your petitioner's revenue is derived from its interstate "port to port" business.

(5) Your petitioner further avers it has no power of condemnation; that it is subject to the fiercest competition and that any person, firm, or corporation at any time may compete with your petitioner by placing a boat of any kind or character in service between the ports at which the boats of your petitioner touch and transact business; that no capital of any kind is required to engage in such competitive business except a sufficient amount to build, purchase, or charter a boat and to pay the charges necessary to operate the same.

(6) Your petitioner further avers that heretofore, to wit, on the 11th day of June, 1910, the said the Interstate Commerce Commission, acting under the authority claimed by it to have been conferred upon it by section 20 of the "act to regulate commerce," approved June 29, 1906, entered its certain order as follows, to wit:

"It is ordered, that Special Report Series Circular No. 10, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, be, and the same is hereby, approved; that a copy of the said Special Report Series Circular No. 10, be sent to each and every carrier by water within the jurisdiction of this commission; that each and every of the said carriers by water be required to make full and true answers to the several inquiries contained in the said Special Report Series Circular No. 10, and to verify its said answers by the oath of the president or other principal officer of such company, and that the said oath be in the form provided in the said Special Report Series Circular No. 10.

"It is further ordered, that October 31, 1910, be and is hereby fixed as the date on or before which the said answers shall be filed."

5 That afterwards, to wit, on the 31st day of October, 1910, the said the Interstate Commerce Commission entered a certain other general order extending the time for compliance with said order of June 11, 1910, up to and including the 31st day of December, 1910.

Your petitioner attaches hereto and marks "Exhibit A," and makes a part hereof, a copy of said special report referred to in said order of June 11, 1910, entered by the said the Interstate Commerce Commission, being Special Report Series Circular No. 10.

(7) Your petitioner avers that a copy of said order was duly served upon the principal officer of your petitioner at his usual place of business in the city of Detroit; that said the Interstate Commerce Commission has notified your petitioner that it will require from your petitioner before the 31st day of December, 1910, an answer to each, every, and all of the questions propounded in said Special Report Series Circular No. 10, referred to in the said order of June 11, 1910, and that your petitioner will be liable to the penalties prescribed in said section 20 of the act to regulate commerce, as amended by the

act approved June 18, 1910, unless your petitioner files with it, the said the Interstate Commerce Commission, on or before December 31, 1910, a full, true, perfect, and complete answer to each, every, and all of the questions contained in said Special Report Series Circular No. 10.

(8) Your petitioner avers that in the interrogatories contained in said Special Report Series Circular No. 10, served by said the Interstate Commerce Commission upon your petitioner, to which an answer is demanded by the said commission from your petitioner, no distinction is made by the said commission in any or either of
6 said questions between your petitioner's amusement park business and your petitioner's international business, and the business transacted by your petitioner which is solely intrastate business and the business transacted by your petitioner which is wholly "port to port" business, and the business which is transacted by your petitioner as the result of the joint rail and water routes to which it has become a voluntary party, as hereinabove set forth. But your petitioner avers that because of the fact that your petitioner has voluntarily become a party to the joint rail and water routes hereinabove referred to the said the Interstate Commerce Commission, acting under the pretended authority of section 20 hereinabove referred to, claims and insists that it has jurisdiction over all the business of your petitioner, regardless of its kind or nature or of the places between which it is transacted.

(9) Your petitioner avers that the Interstate Commerce Commission was created in the year 1887; that though substantially the same authority and duty were imposed at that time upon it with respect to requiring reports from carriers engaged in the business in which your petitioner is now engaged, as hereinabove set forth, the said the Interstate Commerce Commission has never, prior to the entry of the order herein complained of, required any reports from the water carriers generally, of which your petitioner is one, and that the said Interstate Commerce Commission has not, since the organization of your petitioner in 1896, required any report of any kind or character from your petitioner.

Your petitioner further shows that the Interstate Commerce Commission on January 7, 1909, in Opinion No. 787, interpreting the "act to regulate commerce" and its powers thereunder, made the following ruling, to wit:

7 "That carriers of interstate commerce by water are subject to the act to regulate commerce only in respect to traffic transported under a common control, management, or arrangement with a rail carrier, and, in respect to traffic not so transported, they are exempt from its provisions."

(10) Your petitioner further shows that the Interstate Commerce Commission, when it entered the order of June 11, 1910, herein above referred to did not enter it because of any duty imposed upon it under and by virtue of any other act of Congress heretofore passed except the "act to regulate commerce," and your petitioner avers that

there was no other act in existence conferring any authority or imposing any duty upon the Interstate Commerce Commission with respect to water carriers, of which as your petitioner avers it is one, except the "act to regulate commerce" and the amendments thereto.

(11) Your petitioner avers that said inquiries were not propounded by the Interstate Commerce Commission for the purpose of exacting evidence embraced under any complaint filed for violations of the "act to regulate commerce" or for the purpose of making any investigation that might have been made the object of a complaint under the act, or in regard to any case or as to any matter or thing concerning which any complaint is authorized to be made to or before said commission by any provision of the said act or concerning which any question may arise under any of the provisions of said act, or relating to the enforcement of any of the provisions of the said act.

And your petitioner shows that if the said Special Report Series Circular No. 10, should be construed as containing inquiries concerning any case or as to any matter or thing concerning which
8 a complaint is authorized to be made to or before said commission by any provision of said act or concerning which any question may arise under any of the provisions of said act, or relating to the enforcement of any of the provisions of said act, then your petitioner avers that not one of said inquiries is reasonably adapted to such purpose, and that there is no legitimate nor necessary connection between the inquiries propounded and such purpose.

(12) And your petitioner avers that if it should answer the questions contained in said Special Report Series Circular No. 10 and should file said report with the said commission, there is no statute of the United States requiring such report to be kept secret, and the report would then and there become a public document and open to the inspection of your petitioner's competitors either by rail or by water and would be greatly injurious to your petitioner's business. By reference to Special Report Series Circular No. 10 it will appear that it is impossible to answer a large number of the questions contained in said document without divulging to the Interstate Commerce Commission and to the public information with respect to the details of that portion of your petitioner's business which is in connection with its amusement parks and that portion of your petitioner's business which is solely intrastate and that portion of your petitioner's business which is solely "port to port" international or interstate business.

(13) Your petitioner avers that a large number of inquiries propounded in the said Special Report Series Circular No. 10 relates solely to the internal affairs of your petitioner, and it is impossible to answer said questions, or any or either of them, without reporting to the said the Interstate Commerce Commission all of the
9 details in connection with the internal management of your petitioner's business, and none of said questions has any reference to, or connection with, any existing proposed or possible rate, classification, practice or regulation of your petitioner, or the exist-

ence or establishment of any through route, joint classification or division of joint rates.

(14) Your petitioner avers that under the order as drafted and entered by said the Interstate Commerce Commission, no segregation is made between any or either of the questions contained in said circular, but under and by virtue of said order your petitioner is required to make full and true answers to all of the questions therein contained, and your petitioner avers that there is no question contained in said Special Report Series Circular Number 10 which relates solely to that portion of your petitioner's business, which results from the joint rail and water routes to which your petitioner voluntarily became a party with rail carriers.

(15) Your petitioner avers (a) that under the Constitution of the United States no power was conferred upon the Congress of the United States to regulate or to inquire into the internal affairs of any corporation organized under the laws of the State of Michigan or of any other State; (b) that under the Constitution of the United States no power was conferred upon the Congress of the United States to delegate unto any commission or other subordinate body the right to regulate or inquire into the internal affairs of any corporation organized under the laws of the State of Michigan or of any other State; (c) that such power as the Congress has to pass section 20 of the "act to regulate commerce," as amended in June, 1906, and as amended by the act approved June 18, 1910, is derived solely from that provision of the Constitution of the United States reading as follows:

"Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes,"

and that under and by virtue of the grant of power contained in the provision of the Constitution hereinabove last quoted no power was conferred upon the Congress of the United States to regulate any commerce or business which is wholly intrastate, or to make any inquiries respecting commerce or business which is wholly intrastate; (d) that under and by virtue of the "act to regulate commerce" the Congress of the United States did not confer upon the Interstate Commerce Commission the power or the right to require your orator to answer either or any or each, every, and all of the questions contained in said Special Report Series Circular Number 10; (e) that under the terms of the first section of the "act to regulate commerce" as now amended it is provided that:

"The provisions of this act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the

same Territory * * *, *provided, however, that the provisions of this act shall not apply to the transportation of passengers or property or the receiving, delivering, storing, or handling of property wholly within one State and not shipped to or from a foreign country* * * *."

(f) That under and by virtue of the provision aforesaid all
11 of the business of your petitioner which is not transportation at all, or which is wholly intrastate or wholly "port to port," international or interstate business is excluded by the terms of the act from the provisions of the act, and your petitioner avers that it was not the intention of the Congress, by the passage of the act to confer upon the Interstate Commerce Commission the right to inquire into either the internal affairs of your petitioner or with respect to the intrastate business of your petitioner or the "port to port" business of your petitioner.

(16) Your petitioner further avers that under the Constitution of the United States the power was not conferred upon the Congress of the United States to require your petitioner to answer any or either or to answer each, every, and all of the questions propounded in said Special Report Series Circular No. 10; that under the Constitution of the United States the power was not conferred upon Congress to delegate unto the Interstate Commerce Commission the duty or the power to require your petitioner to answer any or either or each, every, and all of the questions contained in Special Report Series Circular No. 10.

(17) Your petitioner further avers that the Congress of the United States did not by the passage of the "act to regulate commerce," or any or either of the amendments thereto, confer upon the Interstate Commerce Commission the power or authority to require your orator to answer any or either or to answer each, every, and all of the interrogatories propounded in said Special Report Series Circular No. 10.

(18) Your petitioner avers that the alleged purpose of the inquiries made in said Special Report Series Circular No. 10 is:
12 "To procure for the use of the Interstate Commerce Commission such full information of the scope and character of business of carriers by water within its jurisdiction and of the extent of their operations as will enable the commission to determine the form for annual reports that will best give the information required by it and at the same time conform as nearly as may be to the present accounting practices of the carriers by water," but your petitioner shows by reference to said Special Report Series Circular No. 10 that none of the inquiries propounded by the said Interstate Commerce Commission in said Exhibit A, is so framed as to furnish to the Interstate Commerce Commission any information whatsoever with respect to the joint rail and water business of carriers by water, or the extent of the operations of the joint rail and water business of carriers by water.

And your petitioner further avers, by reference to Exhibit A that there is no inquiry propounded in said Exhibit A which is limited to the interstate or joint rail and water business of your petitioner, or which, if answered, would furnish any information with respect to the interstate or joint rail and water business of your petitioner, or which would enable, or aid the Interstate Commerce Commission in arriving at or reaching any conclusion with respect thereto.

And you petitioner avers that each and every of said inquiries and the information which might or could be obtained by the Interstate Commerce Commission from the answers to each and every of said questions are entirely foreign to the purpose for which it is alleged said inquiries are made and are not reasonably adapted to such purpose and have no legitimate relation either to any complaint which

13 might be filed for any alleged violation of the act or to any investigation that might be made the object of complaint or to any matter or thing concerning which any complaint authorized by the act might be made or to any question which might arise as to any of the provisions of the act or relating to the enforcement of any of the lawful provisions of the act.

(19) Your petitioner therefore avers that the order of the Interstate Commerce Commission entered June 11, 1910, is void, for the following reasons:

(a) Because Congress was without power to make such inquiries or investigations itself, or to require answers to any or either or to each, every, and all of the interrogatories propounded in Special Report Series Circular No. 10.

(b) Because Congress was without power to delegate such authority to the Interstate Commerce Commission.

(c) Because Congress did not delegate such power to the Interstate Commerce Commission.

(d) Because the inquiries and each of them propounded in said Special Report Series Circular No. 10 are not limited to the interstate business or joint rail and water business of your petitioner and are not pertinent nor appropriate to the interstate business or joint rail and water business of your petitioner, or to the avowed purpose of the Interstate Commerce Commission in making said inquiries and are not appropriate and have no direct or necessary bearing upon any subject concerning which the Congress or the Interstate Commerce Commission has any jurisdiction and are not reasonably adapted to any purpose within the power either of the Congress or of the Interstate Commerce Commission, and because there is no legitimate nor necessary connection between the interstate
14 business or the joint rail and water business of your petitioner and the inquiries propounded, or any or either of them.

(e) Because the exercise of such power, either by Congress or by the Interstate Commerce Commission, would be in violation of the fourth amendment to the Constitution of the United States, prohibiting unreasonable searches or seizure.

(f) Because the information sought by said inquiries is a property right of this petitioner and the requirement by the Interstate Commerce Commission, acting under the pretended authority of section 20 of the "act to regulate commerce," aforesaid, is the taking of the property of this petitioner without compensation and without due process of law, in violation of the fifth amendment to the Constitution of the United States.

(20) Your petitioner further avers that if section 20 of the "act to regulate commerce" should be construed as conferring upon the Interstate Commerce Commission the right to require your petitioner to answer each, every, and all of the questions propounded to your petitioner in Special Report Series Circular No. 10, then your petitioner avers that said section 20 of the "act to regulate commerce" is void for the reason that the Constitution of the United States did not confer upon the Congress the authority to require from your petitioner answers to each, every, and all of said interrogatories, and did not confer upon the Congress the power to delegate such authority to the Interstate Commerce Commission. And because in section 20 of the "act to regulate commerce" no distinction is made between reports respecting interstate commerce and intrastate commerce, and said section 20 is so drafted that it is impossible to interpret

15 the same as meaning anything other than that such reports, if any, as should be required thereunder should include reports with respect both to interstate commerce and intrastate commerce, and because the requiring of your petitioner to answer each, every, and all of said interrogatories is not a regulation of interstate commerce, but is an investigation into the private and internal affairs of your petitioner, and because the answering of such inquiries not being a regulation of interstate commerce, the requirement that such inquiries be answered is in violation of the fourth amendment to the Constitution of the United States in that it would be an unreasonable search and seizure with respect to your petitioner's business, and is also in violation of the fifth amendment to the Constitution of the United States in that it would be a taking of your petitioner's property without due process of law and without compensation.

(21) Your petitioner avers that notwithstanding that said order is void, if your petitioner fails to file an answer to each, every, and all of the questions propounded by said the Interstate Commerce Commission in Special Report Series Circular Number 10, then said the Interstate Commerce Commission will bring or cause to be brought a large number of suits against your petitioner to recover the penalties claimed by it to be due from your petitioner to the United States because of your petitioner's failure to comply with said void order, whereby your petitioner will be subjected to a great multiplicity of suits and great loss and damage will be inflicted upon your petitioner.

Which acts and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your petitioner.

16 (22) Your petitioner therefore prays that upon the filing of this petition a temporary or interlocutory order may be entered herein, suspending the said order of said Interstate Commerce Commission and restraining said commission from taking any steps or instituting any proceedings to enforce said order, and that upon a final hearing of this cause a decree be entered herein, enjoining, setting aside, annulling, or suspending the said order of the said Interstate Commerce Commission, and perpetually enjoining the enforcement of said order and perpetually enjoining the said commission, or its members, their agents, servants, and representatives from enforcing the said order and from taking any steps or taking any proceedings toward the enforcement of said order.

(23) Your petitioner further prays that if, in the judgment of this honorable court, the said Interstate Commerce Commission has the authority to require an answer to any or either of the questions contained in said Special Report Series Circular Number 10, that the said court will, upon the final hearing of this cause, enter an order herein specifically designating such questions, if any, contained in said Special Report Series Circular Number 10 which the said Interstate Commerce Commission may lawfully require your orator to answer, and enjoining, setting aside, annulling, and suspending the order of said Interstate Commerce Commission with respect to each and every of the other remaining questions contained in said Special Report Series Circular Number 10, and perpetually enjoining the enforcement of said order with respect to such remaining questions and each of them, and perpetually enjoining the said Interstate Commerce Commission and its members, their agents, servants, and

17 representatives from enforcing the said order with respect to any or either of the questions so restrained, and from taking any steps or any proceedings toward the enforcement of said order with respect to such last mentioned questions.

(24) Your petitioner further prays that if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order, as prayed for herein, an order be issued herein suspending the said order of the said Interstate Commerce Commission and enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein.

And your petitioner further prays that such other and further relief be granted in the premises as justice and equity may require.

(25) Your petitioner prays that your honors will forthwith cause a copy of this petition to be served by the marshal or deputy marshal of this court or by the proper United States marshal or deputy marshal upon the United States by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice, and that the defendant, the United States, be commanded, on a certain day and under a certain penalty therein to be specified, personally to be and appear in this honorable

court and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your petitioner will ever pray, etc.

WHITE STAR LINE,
By WINSTON, PAYNE, STRAWN & SHAW,
Its Solicitors.

18 STATE OF MICHIGAN, } ss:
COUNTY OF WAYNE, }

L. C. Waldo, being first duly sworn, says that he is the president of White Star Line, complainant in the above-entitled cause; that he knows the facts stated in the above and foregoing bill of complaint, and that the said facts are true.

L. C. WALDO.

Subscribed and sworn to before me this 24th day of February, A. D. 1911.

[NOTARIAL SEAL.]

GEORGE E. PHILLIPS,
Notary Public,

(My commission expires February 18, 1913.)

(Exhibit A omitted in printing, per stipulation.)

66

(Original.)

In the United States Commerce Court.

WHITE STAR LINE, PETITIONER,	} No. 24.
<i>vs.</i>	
THE UNITED STATES, RESPONDENT.	

The President of the United States, to Honorable George W. Wickersham as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 14th day of March, A. D. 1911.

G. F. SNYDER, *Clerk.*

Served on me, with copy of the complaint, at 3.15 p. m., March 14, 1911, by Mr. Starek, marshal.

BLACKBURN ESTERLINE.

(Duplicate.)

In the United States Commerce Court.

WHITE STAR LINE, PETITIONER,	} No. 24.
vs.	
THE UNITED STATES, RESPONDENT.	

The President of the United States, to Edward A. Moseley as Secretary of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness, the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 15th day of March, A. D. 1911.

G. F. SNYDER, *Clerk.*

Original of above notice and copy of petition served upon Edward A. Moseley, secretary of the Interstate Commerce Commission, this 15th day of March, A. D. 1911 (accepted by W. H. Connelly).

F. J. STAREK, *Marshal.*

68 *Appearance of Interstate Commerce Commission and P. J. Farrell as its solicitor.*

Filed March 20, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,	} In equity. No. 24.
v.	
THE UNITED STATES.	

APPEARANCE.

To Mr. G. F. Snyder, Clerk of said Court:

I hereby enter herein the appearance of the Interstate Commerce Commission as a party respondent, and of myself as its solicitor.

Dated March 20, 1911.

P. J. FARRELL,

Solicitor for Interstate Commerce Commission, Respondent.

69 *Motion of Interstate Commerce Commission to dismiss.*

Filed March 21, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,	} In equity. No. 24.
v.	
THE UNITED STATES.	

MOTION TO DISMISS.

Comes now the Interstate Commerce Commission, one of the parties respondent in the above-entitled suit, by its solicitor, and moves this honorable court to dismiss the petition of the above-named petitioner, and in support of said motion shows:

That the allegations contained and the facts set forth in said petition are not sufficient to entitle said petitioner to the relief, or any of the relief, prayed for by said petitioner in and by its said petition.

Dated March 21, 1911.

INTERSTATE COMMERCE COMMISSION.
By J. J. FARRELL, *its Solicitor.*

70

Notice.

Filed March 25, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION,	} In equity. No. 24.
v.	
THE UNITED STATES.	

NOTICE.

To Messrs. Winston, Payne, Strawn & Shaw, solicitors for the above-named petitioner:

Please take notice that I have to-day entered herein the appearance of the Interstate Commerce Commission as a party respondent, and of myself as its solicitor.

Dated March 20, 1911.

P. J. FARRELL,
Solicitor for Interstate Commerce Commission, Respondent.

We hereby accept service of the above notice this 23rd day of March, 1911.

WINSTON, PAYNE, STRAWN & SHAW,
Solicitors for White Star Line, Petitioner.

Journal entry.

Proceedings of April 3, 1911.

WHITE STAR LINE, PETITIONER,	} No. 23.
<i>vs.</i>	
UNITED STATES, RESPONDENT.	

WHITE STAR LINE, PETITIONER,	} No. 24.
<i>vs.</i>	
UNITED STATES, RESPONDENT.	

Upon request of counsel, said causes were assigned for argument, with numbers twenty-one and twenty-two, on Wednesday, April 12, 1911, after number fifteen.

Answer of the United States.

Filed April 4, 1911.

In the United States Commerce Court.

April term, 1911.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} No. 24.
<i>v.</i>	
THE UNITED STATES.	

ANSWER OF DEFENDANT, THE UNITED STATES.

The defendant, the United States, for answer to the petition filed against it in this cause, says:

I.

It admits each and every allegation of fact contained therein, except as follows:

First. While it admits that petitioner is the owner of an amusement park at Tashmoo, in the State of Michigan, and also one at Sugar Island, in the State of Michigan, and in connection therewith operates the various devices for amusement described in the first paragraph of the petition, yet it alleges that said parks and said devices constitute a part of petitioner's general property, and are operated in connection with and for the purpose of promoting its interstate business, and bear a material and substantial relationship to said business.

73 Second. Defendant denies that no more than 1 per cent of the revenue received by petitioner from its entire business is derived from its interstate joint rail and water business, and not more than 24 per cent from its interstate port-to-port business.

It avers that it derives a much larger proportion of its entire receipts from such business, but as petitioner has voluntarily subjected

itself to the provisions of the interstate-commerce law of the United States, it deems it wholly immaterial what the proportion between the revenues derived from its various sources of income is.

Third. Defendant denies that the inquiries made in the exhibit to the petition do not call for information which has a legitimate or necessary connection with any matter or thing concerning which a complaint is authorized to be made to or before the Interstate Commerce Commission. In fact, the information sought therein is most material and vital to the commission in enabling it to perform many of the duties which are imposed upon it by the statute.

Fourth. It is true that said inquiries call for information with reference to all kinds of business transacted by petitioner, and is not limited to its interstate business or to business transacted under its joint arrangement with railroad companies; but under the provisions of the statute not only can a report of petitioner's interstate business or business under its joint arrangement with railroad companies be required, but it may be compelled, at the instance of the commission, to report its receipts and disbursements derived from all sources, and all other matters set forth in Exhibit A to the petition; and, furthermore, the information concerning each and every item of its business as described therein is necessary to enable the commission to properly and lawfully regulate the interstate commerce carried by petitioner, and the commerce transported under its joint rail-and-water arrangement; and such information does, therefore, bear a substantial and material relation to such interstate commerce, and is a legitimate matter of inquiry at the instance of the commission; and, while there may have been no charge preferred against petitioner, and while no particular offense against the interstate-commerce laws may be under investigation by that body, yet it is made its duty to keep informed as to the business methods and transactions of all carriers subject to the provisions of the interstate-commerce laws, and to enforce each and every provision of said laws, and, on its own motion, to investigate and determine what rates fixed by the carrier are reasonable and just, and to fix just and reasonable rates in case those existing are found to be unreasonable and unjust.

And defendant therefore denies that the answers called for would furnish no information with respect to the interstate or joint rail and water business of petitioner which would enable the commission to arrive at or reach any proper conclusion with reference thereto; or that the said information is foreign to the purposes for which the inquiries were made, and is not reasonably adapted thereto, or

has no legitimate relation to a complaint which might be filed for a violation of the interstate-commerce law, or to an investigation that might be instituted as a result of a complaint, or to any matter or thing concerning which any complaint authorized by the act might be made, or to any question which might arise as to any provisions of said law or relating to the enforcement of the same.

II.

While defendant admits all other allegations of fact contained in the petition, yet it does not admit, but denies, all inferences of fact from particular facts alleged, and all conclusions of law insisted upon in the petition.

And, now having fully answered, defendant prays to be hence dismissed.

GEO. W. WICKERSHAM,
Attorney General of the United States.

J. A. FOWLER,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

APRIL, 1911.

76

Journal entry.

Proceedings of April 11, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 23.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 24.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

Upon request of counsel, the hearing of said causes was postponed until Monday, April 17, 1911.

77

Appearance of Charles W. Needham.

Filed April 17, 1911.

APRIL 17, 1911.

The Clerk of the United States Commerce Court,

Washington, D. C.

SIR: Please enter my appearance as attorney for the Interstate Commerce Commission in Nos. 21, 22, 23, and 24.

Very Respty,

CHAS. W. NEEDHAM.

78

Journal entry.

Proceedings of April 17, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 23.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 24.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

Said causes came on for hearing on the demurrers in numbers 21 and 22 and the motions to dismiss in numbers 23 and 24, and the arguments of counsel were commenced, Mr. Charles W. Needham appearing in behalf of the Interstate Commerce Commission and Mr. Ralph M. Shaw in behalf of the petitioners.

Petitioners were given leave to file amended bills in numbers 21 and 22, with the understanding that the demurrers of the Interstate Commerce Commission interposed to the original bills stand as demurrers to the amended bills.

79

Journal entry.

Proceedings of April 18, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 21.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

GOODRICH TRANSIT COMPANY, PETITIONER,	}	No. 22.
<i>vs.</i>		
INTERSTATE COMMERCE COMMISSION, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 23.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

WHITE STAR LINE, PETITIONER,	}	No. 24.
<i>vs.</i>		
THE UNITED STATES, RESPONDENT.		

Said causes came on for further hearing upon the demurrers and the motions to dismiss the petitions, and the arguments of counsel were continued, Mr. Ralph M. Shaw appearing in behalf of the petitioners and Hon. James A. Fowler in behalf of the United States.

Journal entry.

Proceedings of April 19, 1911.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	} No. 21.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	
GOODRICH TRANSIT COMPANY, PETITIONER, <i>vs.</i>	} No. 22.
INTERSTATE COMMERCE COMMISSION, RESPONDENT.	
WHITE STAR LINE, PETITIONER, <i>vs.</i>	} No. 23.
THE UNITED STATES, RESPONDENT.	
WHITE STAR LINE, PETITIONER, <i>vs.</i>	} No. 24.
THE UNITED STATES, RESPONDENT.	

Said causes came on for further hearing on the demurrers and the motions to dismiss the petitions, and the arguments of counsel were concluded, Hon. James A. Fowler appearing in behalf of the United States and Mr. Ralph M. Shaw appearing in behalf of the petitioners. Thereupon the causes were taken under advisement by the court.

Counsel for the respondent, Interstate Commerce Commission, granted five days to file brief.

Counsel for the petitioners granted ten days after receipt of brief for respondent within which to file brief.

[Opinion omitted in printing per stipulation.]

Order.

Filed and entered October 13, 1911.

In the United States Commerce Court.

GOODRICH TRANSIT COMPANY, PETITIONER, <i>v.</i>	} No. 21.
THE INTERSTATE COMMERCE COMMISSION, RE- spondent. The United States, intervening respondent.	
GOODRICH TRANSIT COMPANY, PETITIONER, <i>v.</i>	} No. 22.
THE INTERSTATE COMMERCE COMMISSION, RE- spondent. The United States, intervening respondent.	
WHITE STAR LINE, A CORPORATION, PETITIONER, <i>v.</i>	} No. 23.
THE UNITED STATES, RESPONDENT. THE INTER- state Commerce Commission, intervening re- spondent.	

WHITE STAR LINE, A CORPORATION, PETITIONER,
v.
 THE UNITED STATES, RESPONDENT. THE INTER-
 state Commerce Commission, intervening re-
 spondent. } No. 24.

FINAL DECREE.

These causes came on to be heard on the 17th, 18th, and 19th days of April, A. D. 1911, on the demurrer of the Interstate Commerce Commission filed on the 30th day of December, A. D. 1910, in cases Nos. 21 and 22, and on motion to dismiss of Interstate Commerce Commission filed on the 21st day of March, A. D. 1911, in cases Nos. 23 and 24, and were argued by counsel, Mr. Ralph M. Shaw, appearing for the petitioners, Mr. Charles W. Needham for the Interstate Commerce Commission, and Mr. J. A. Fowler for the United States, he having applied to the court for permission to participate in the argument, as the questions presented on the said demurrers and motions might be determinative of the cases, and said permission having been granted.

133 It is therefore ordered, adjudged, and decreed that the said demurrers be and the same are hereby overruled, and the said motions to dismiss be and the same are hereby denied; and it further appearing to the court, and it is admitted by counsel for the United States, that under the holding of the court the answers of the United States tender no material issue of fact, and as the Interstate Commerce Commission elects to stand upon the demurrers and motions filed by it, and inasmuch as the adjudication is conclusive of all questions presented, this decree is therefore made final, and the prayers of the petitioners for orders of injunction, as prayed for in petition, are granted.

It is further ordered, adjudged, and decreed that the orders dated the 31st day of May, A. D. 1910, and the 11th day of June, A. D. 1910, be, and the same are hereby, set aside.

It is further ordered, adjudged, and decreed that the matter be, and the same is hereby, referred to the Interstate Commerce Commission to proceed with according to right and justice.

By the court:

MARTIN A. KNAPP, *Presiding Judge.*

134 *Assignment of errors.*

Filed November 11, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,
v.
 THE UNITED STATES, RESPONDENT, AND THE INTERSTATE COM-
 merce Commission, intervener. } No. 24.

ASSIGNMENT OF ERRORS.

Come now the United States and the Interstate Commerce Commission, by their counsel, and in connection with their application for

appeal file the following assignment of errors on which they will rely upon said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered October 13, 1911, in the above-entitled cause.

First. The Commerce Court erred in not dismissing the petition for want of equity.

Second. The Commerce Court erred in holding that the Interstate Commerce Commission is not authorized by section 20 of the interstate commerce act to require petitioner to report annually any business other than that conducted partly by it and partly by railroad under a common control, management, or arrangement for a continuous carriage or shipment.

Third. The Commerce Court erred in not holding that the Interstate Commerce Commission is authorized to require annual reports from petitioner showing all matters which are specifically described in section 20 of the interstate commerce act, and in holding that the scope of the report authorized by said section 20 is restricted by the provisions of section 1 of said act.

135 Fourth. The Commerce Court therefore erred in not sustaining the motion to dismiss the petition filed by the Interstate Commerce Commission and in granting a perpetual injunction against the enforcement of the order issued by the said commission on the 11th day of June, 1910, which order is attacked in the petition.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered October 13, 1911, be reversed, annulled, and set aside, and that the petition of the petitioner be dismissed, and for such other and further order as may be appropriate.

GEO. W. WICKERSHAM,

Attorney General of the United States.

CHAS. W. NEEDHAM,

Solicitor for the Interstate Commerce Commission.

136

Petition for appeal.

Filed November 11, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,

v.

THE UNITED STATES, RESPONDENT, AND THE INTERSTATE
Commerce Commission, intervener.

No. 24.

PETITION FOR APPEAL.

The United States, respondent, and the Interstate Commerce Commission, intervener, feeling themselves aggrieved by the final decree entered in the above-entitled cause on the 13th day of October, 1911,

by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervener, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

WASHINGTON, November 11, 1911.

GEO. W. WICKERSHAM,
Attorney General of the United States.

CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

137

Order allowing appeal.

Filed November 11, 1911.

In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,	} No. 24.
<i>v.</i>	
THE UNITED STATES, RESPONDENT, AND THE INTERSTATE Commerce Commission, intervener.	

ORDER ALLOWING APPEAL.

In the above-entitled cause, the United States and the Interstate Commerce Commission having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered October 13, 1911, and having at the same time made and filed an assignment of errors, and having in all respects conformed to the statute and the rules of court in such case made and provided:

It is ordered and decreed that the said appeal be, and the same is hereby, allowed, as prayed and made returnable on the eleventh day of December, 1911. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

NOVEMBER 11, 1911.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Transcript of docket entries.

United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT, THE INTERSTATE COM-
merce Commission, intervening respondent.

No. 24.

Attorneys: John Barton Payne, Silas H. Strawn, Ralph M. Shaw, Garrard B. Winston, for petitioner; James A. Fowler, for the United States; Chas. W. Needham, P. J. Farrell, for the Interstate Commerce Commission.

PROCEEDINGS.

1911.

Mar. 6. Petition filed in U. S. Commerce Court.

Mar. 14. Copy of petition served on the Attorney General of the United States.

Mar. 15. Copy of petition served on secretary of Interstate Commerce Commission.

Mar. 20. Appearance of Interstate Commerce Commission as party respondent, and of Mr. P. J. Farrell, as its solicitor, filed.

Mar. 21. Motion of Interstate Commerce Commission, by its solicitor, to dismiss petition filed.

Mar. 25. Notice to solicitors for petitioner of appearance of Interstate Commerce Commission as a party respondent, and of Mr. P. J. Farrell, as its solicitor, filed.

Apr. 4. Answer of the United States filed.

Apr. 17. Appearance of Mr. Charles W. Needham for Interstate Commerce Commission filed.

Apr. 25. Brief on behalf of Interstate Commerce Commission filed.

May 5. Brief and argument for petitioner filed.

Oct. 5. Opinion filed.

Oct. 13. Order entered overruling demurrers, dismissing motions, and setting aside order of I. C. C.

Nov. 11. Assignment of errors filed.

Nov. 11. Petition for appeal filed.

Nov. 11. Order allowing appeal filed.

Nov. 20. Citation on appeal filed.

United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES, RESPONDENT, THE INTERSTATE COM-
merce Commission, intervening respondent.

No. 24.

UNITED STATES OF AMERICA, ss:

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 138, inclusive) to be a true and complete transcript of the proceedings had of record in the above-entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 24th day of November, A. D. 1911.

[SEAL.]

G. F. SNYDER, Clerk.

140 Filed Nov. 20, 1911. United States Commerce Court. G. F. Snyder, clerk.

UNITED STATES OF AMERICA, ss:

To White Star Line, a corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court wherein The United States and The Interstate Commerce Commission are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this eleventh day of November, in the year of our Lord one thousand nine hundred and eleven.

MARTIN A. KNAPP,

Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 17th day of November, A. D. 1911.

RALPH M. SHAW,

Sol't for Appellee.

141 In the United States Commerce Court.

WHITE STAR LINE, A CORPORATION, PETITIONER,

v.

THE UNITED STATES, RESPONDENT, AND INTERSTATE COM-
merce Commission, intervening respondent.

No. 24.

STIPULATION.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their respective solicitors, that Exhibit A attached to the original petition filed March 6, 1911, in the Commerce Court, is the same as Exhibit A attached to the original bill of complaint and Exhibit A attached to the amended petition in Goodrich Transit Company v. Interstate Commerce Commission, No. 21, and need not be printed in the record in the above-entitled cause; and that the copies of Exhibit A furnished for the use of the court in No. 21 may also be used on the hearing of the appeal of this cause, to all intents and purposes, as though printed in the record herein.

It is further stipulated and agreed that the opinion of the Commerce Court filed October 5, 1911, and constituting part of the record herein need not be printed and that for the purposes of the hearing of the appeal in this case, reference may be had to the opinion of

the Commerce Court printed in the record in Goodrich Transit Company v. Interstate Commerce Commission, No. 21, to all intents and purposes, as though printed in the record in this case.

Dec. 6, 1911.

RALPH M. SHAW,
Solicitor for Petitioner.

BLACKBURN ESTERLINE,
For the United States.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

142 (Indorsed:) File No. 22958. Supreme Court U. S. October term, 1911. Term No., 882. The United States and The Interstate Commerce Commission, appellant, vs. White Star Line. Stipulation to omit portions of the record in printing. Filed December 8, 1911.

(Indorsement on cover:) File No. 22958. United States Commerce Court. Term No., 882. The United States and The Interstate Commerce Commission, appellants, vs. White Star Line. Filed December 8th, 1911. File No. 22958.



In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES and THE INTERSTATE Commerce Commission, appellants, <i>v.</i> WHITE STAR LINE.	}	No. 882.
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APPEAL FROM THE UNITED STATES COMMERCE COURT.

MOTION TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and moves the court to advance the above-entitled cause for hearing at this term.

The appeal is from a final order or decree of the Commerce Court entered October 13, 1911, permanently enjoining the enforcement of an order of the Interstate Commerce Commission.

The following questions, among others are involved:

1. Whether the Interstate Commerce Commission is authorized by section 20 of the act to regulate commerce, as amended, to require White Star Line, a water-line carrier, to report annually any business other than that conducted partly by it and partly by

railroad under a common control, management, or arrangement for a continuous carriage or shipment.

2. Whether the Interstate Commerce Commission is authorized to require annual reports from White Star Line, a water-line carrier, showing all matters which are specifically described in section 20 of the act to regulate commerce, as amended.

3. Whether the scope of the report authorized by section 20 is restricted by the provisions of section 1 of the act to regulate commerce, as amended.

4. The public interests are involved.

The reports sought by the Interstate Commerce Commission are due on or before July 1 of each year, and unless the opinion and judgment of this court is obtained prior to July 1, 1912, no such reports of common carriers covering business required by the orders will be made until July 1, 1913.

The priority suggested is authorized by section 2 of the act of June 18, 1910 (36 Stat. L., Pt. I, ch. 309, p. 542).

Opposing counsel concur.

F. W. LEHMANN,
Solicitor General.

DECEMBER, 1911.



In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION and The United States, appellants, <i>v.</i> GOODRICH TRANSIT COMPANY.	No. 879.
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THE INTERSTATE COMMERCE COMMISSION and The United States, appellants, <i>v.</i> GOODRICH TRANSIT COMPANY.	No. 880.
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THE UNITED STATES AND THE INTERSTATE Commerce Commission, appellants, <i>v.</i> WHITE STAR LINE.	No. 881.
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THE UNITED STATES AND THE INTERSTATE Commerce Commission, appellants, <i>v.</i> WHITE STAR LINE.	No. 882.
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BRIEF AND ARGUMENT ON BEHALF OF UNITED STATES.

STATEMENT OF THE CASES.

These cases arise out of certain orders made by the Interstate Commerce Commission requiring water line carriers to keep their books in the manner prescribed and to report certain information to the commission.

In No. 879 an original bill was filed in the United States Circuit Court for the Northern District of Illinois before the organization of the Commerce Court, and the facts alleged therein which are material for a proper understanding of the questions of law involved and the grounds relied upon for relief are as follows:

It is alleged that the Goodrich Transit Co., a corporation organized under the laws of the State of Maine, is engaged in the transportation of passengers and freight for hire on Lakes Michigan and Huron and the rivers tributary thereto; that it owns and operates ten steamers and one tug, and also owns other properties described; that it carries passengers and freight originating at ports in the States of Michigan, Wisconsin, and Illinois, and destined to ports in each of the States of Michigan, Wisconsin, and Illinois; that such transportation is entirely by water and unconnected with any land transportation; that it also transports passengers and freight from ports in one State to ports in another State; *that it has also agreed with some of the interstate railroad carriers to establish certain through routes over which passengers and freight are carried under joint tariffs, and that it has voluntarily filed with the Interstate Commerce Commission its joint tariffs or its concurrence in tariffs filed by said railroad carriers, and that its steamers carry for hire passengers and freight under such joint tariffs over the water portion of*

said through routes; that more than 80 per cent of the gross revenue derived from all of its business is received from its port-to-port and intrastate business, and less than 20 per cent from its joint rail and water business; that on the 11th day of June, 1910, the Interstate Commerce Commission entered the following order:

It is ordered that special report series circular No. 10, prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, be, and the same is hereby approved; that a copy of the said special report series circular No. 10 be sent to each and every carrier by water within the jurisdiction of this commission; that each and every of the said carriers by water be required to make full and true answers to the several inquiries contained in the said special report series circular No. 10, and to verify its said answers by the oath of the president or other principal officer of such company, and that the said oath be in the form provided in the said special report series circular No. 10.

It is further ordered that October 31, 1910, be, and is hereby, fixed as the date on or before which the said answers shall be filed. (Rec., p. 3.)

that the date upon which said order was to go into effect was extended to December 31, 1910, and that a copy of the special report prepared by Henry C. Adams, referred to in the order, is made a part of

the petition, and special attention is called to the fact that no distinction is made in said order between intrastate and port-to-port business and the traffic carried on under the joint traffic arrangement with railroad carriers. (Rec., pp. 1-8.)

On April 17, 1911, after the cause had been transferred to the Commerce Court, by leave of the court, an amended bill was filed, the material allegations of which were the same as those contained in the original bill. (Rec., pp. 17-26.)

The grounds upon which the order of the commission is attacked are:

(1) Congress was without power to make such inquiries or investigations itself or to require answers to either of the interrogatories propounded to the company.

(2) Congress was without power to delegate such authority to the commission.

(3) Congress did not delegate such power to the commission.

(4) The inquiries are not limited to the interstate business or joint rail and water business of the company, and are not pertinent or appropriate to its interstate business or joint rail and water business, and have no direct or necessary bearing upon any subject concerning which Congress or the Interstate Commerce Commission has jurisdiction, and are not reasonably adapted to any purpose within the power either of Congress or the Interstate Commerce Commission.

(5) The exercise of such power is an unreasonable search or seizure, and violative of the fourth amendment to the Constitution.

(6) The information sought is a property right of the company, and the requiring of such information is the taking of its property without compensation and without due process of law, in violation of the fifth amendment to the Constitution. (Rec., pp. 6, 24.)

A demurrer was filed by the Interstate Commerce Commission to the original bill. (Rec., pp. 10, 11.)

An answer was filed by the United States wherein all the facts alleged in the bill were admitted except it was alleged—

(1) That while the income from each of the different kinds of business stated in the bill could with reasonable accuracy be ascertained, yet it is impossible to determine with any substantial degree of accuracy the expenses incurred in either of them as separate and distinct from those incurred in the others.

(2) That it is essential that the commission be informed as to the total income derived by complainant from all its investments and from all sources and as to all its expenses, in order that the commission may determine what are reasonable and just rates to be charged by complainant in its joint rail and water business, and to determine whether or not in all respects it complies with the provisions of the

laws of the United States regulating interstate commerce, and that there is a material and substantial relationship between the information sought by the commission and the interstate commerce carried by complainant and the legitimate duties of the Interstate Commerce Commission prescribed by the act creating the same and under which it operates, and that it is impossible for the commission to perform its duties in an efficient way without the information in regard to the complainant's intrastate and port-to-port business. (Rec., p. 15.)

The original bill in No. 880 was filed by the same complainants and at the same time as the bill in No. 879, and the material allegations are precisely the same. In this bill two orders of the commission are attacked, the first of which reads as follows:

The subject of a uniform system of accounts to be prescribed for and kept by carriers being under consideration, the following order was entered:

It is ordered, that the classification of operating revenue of carriers by water with the text pertaining thereto prepared under the direction of this commission by Henry C. Adams, in charge of statistics and accounts, and embodied in printed form to be hereafter known as first issue, a copy of which is now before this commission, be, and the same is hereby, approved; that a copy thereof duly authenticated by the secretary of the commission be filed in its archives and a second copy thereof, in like manner authenticated, in the

office of the bureau of statistics and accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, that the said classification of operating revenues of carriers by water with the text pertaining thereto, be, and is hereby, prescribed for the use of carriers by water subject to the provisions of the act to regulate commerce as amended June 29, 1906, in the keeping and recording of their operating revenue accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all operating revenue accounts in conformity therewith; and that a copy of the said first issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered that the rules contained in the said first issue of the classification of operating revenues of carriers by water are, and by virtue of this order do become, the lawful rules according to which the said operating revenues are defined; and that each and every person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said rules in the keeping and recording of the operating revenue accounts of any such carrier; and that it shall be unlawful for any such carrier or for any re-

ceiver or operating trustee of any such carrier or for any person directly in charge of the accounts of any such carrier or of any receiver or operating trustee of any such carrier to keep any account or record or memorandum of any operating revenue item except in the manner and form in the said first issue set forth and hereby prescribed and except as hereinafter authorized.

It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may subdivide any primary account in the said first issue established as may be required for the purposes of any such carrier or of any receiver or operating trustee of any such carrier, or may make assignment of the amount credited to any such primary account to operating divisions, to its individual lines, or to States; provided, however, that a list of such subprimary accounts set up or such assignments made by any such carrier or by any receiver or operating trustee of any such carrier be first filed in the office of the bureau of statistics and accounts of this commission subject to disapproval by the commission.

It is further ordered that in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the twelve months from the time that the said first issue becomes effective, keep and maintain, in addition to the operating revenue accounts hereby prescribed, such portion or portions of its

present accounts with respect to operating revenue items as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

It is further ordered that any such carrier or any receiver or operating trustee of any such carrier may, in addition to the operating revenue accounts hereby prescribed, keep any temporary or experimental accounts the purpose of which is to develop the efficiency of operations; provided, however, that such temporary or experimental accounts shall not impair the integrity of any general or primary account hereby prescribed, and that any such temporary or experimental accounts shall be open to inspection by the commission.

It is further ordered that January 1, 1911, be, and is hereby, fixed as the date on which the said first issue shall become effective.

A true copy.

EDW. A. MOSELEY, *Secretary*.

The second order was exactly the same as the first except it applies to "operating expenses" instead of "operating revenues" of the carriers. (Rec., pp. 4-6.) There was an amended bill filed also in this case after it was transferred to the Commerce Court, but it contained no additional allegations material to the questions here presented. (Rec., pp. 20-32.)

The validity of these orders was questioned upon the same grounds as those stated in No. 879. (Rec., pp. 9, 29.)

A demurrer was filed by the Interstate Commerce Commission, and an answer filed by the United States admitting all facts stated in the bill, except it was alleged that the methods of bookkeeping prescribed have a material relationship to the duties of the commission, and that said methods are essential for the proper information of the commission and to enable them to perform their duties. (Rec., pp. 13 and 18.)

Nos. 881 and 882, *United States et al. v. White Star Line*, are cases of the same character, brought by different companies. No. 882 questions the validity of the same order that is attacked in No. 879, and No. 881 attacks the orders that are assailed in No. 880. The material facts alleged are the same, except in the latter cases it is alleged that the White Star Line Co. owns and operates two amusement parks, one at Tashmoo and the other at Sugar Island, in the State of Michigan; and in connection with said parks it owns, operates, and derives revenue from lunch stands, merry-go-rounds, bowling alleys, bathhouses, souvenir stands, photograph galleries, boat liveries, and launch ferries; and that the company collects admission fees from people entering said amusement parks. And it is further alleged that not more than 1 per cent of its entire revenue, including its amusement parks and steamers, is derived from its interstate joint rail

and water business, and not more than 24 per cent from its interstate port-to-port business. (Rec., p. 2.)

Motions to dismiss these petitions were filed by the Interstate Commerce Commission, and answers were filed by the United States of the same nature as those filed in Nos. 879 and 880. (Rec., pp. 16-19.)

All the cases were heard together by the Commerce Court upon the demurrers and motions to dismiss filed by the Interstate Commerce Commission. The United States was, however, represented in the argument.

The court was of the opinion that Congress had not undertaken to vest any power in the Commission to prescribe methods of bookkeeping for, or to require reports from carriers subject to the provisions of the act as to any intrastate business or any business which was not carried by water lines under a joint traffic agreement with railroad carriers; and hence that these orders are void, inasmuch as they are not confined to traffic carried under joint arrangement with the railroad carriers, but apply also to intrastate business and port-to-port business.

The court entered an order in each case overruling the demurrers and motions to dismiss, and reciting that "it further appearing to the court and it is admitted by counsel for the United States that under the holding of the court the answers

of the United States tender no material issue of fact, and as the Interstate Commerce Commission elects to stand upon the demurrers and motions filed by it, and inasmuch as the adjudication is conclusive of all questions presented, this decree is therefore made final, and the prayers of the petitioners for orders of injunction as prayed for in petition are granted." (Rec., No. 879, p. 54; No. 880, p. 35; No. 881, p. 22; No. 882, p. 19.)

Errors were assigned to the action of the court, and appeals were prosecuted to this court.

STATUTE.

So much of section 20 of the Interstate Commerce act as amended by the act of June 18, 1910 (36 Stat., ch. 309, p. 539), as is here material reads as follows:

SEC. 20 (as amended June 29, 1906, February 25, 1909, and June 18, 1910). That the commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, and from the owners of all railroads engaged in interstate commerce as defined in this act; to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid,

the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the commission by

order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. The commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, and it may employ special agents or examiners, who shall have authority under the order of the commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the commission or any of its authorized agents or examiners, such

carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be

destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

BRIEF AND ARGUMENT.

I.

The court erred in holding that the Interstate Commerce Commission is not authorized by section 20 of the Interstate Commerce act to prescribe a method of bookkeeping for, and to exact reports from, water-line carriers subject to the provisions of the act, as to any other business than that carried by them under an arrangement with a railroad company for a continuous carriage or shipment.

The first section of the act provides that "the provisions of this act shall apply to any * * * common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State * * * to any other State."

The Commerce Court held, first, that the commission has no power under the statute to regulate the transportation of any commerce by a water-line carrier except such as is carried under an arrangement with a carrier by rail for a continuous shipment. This proposition was conceded by the United States in the Commerce Court, and is also conceded here.

The court then considered the scope of the authority conferred upon the commission by section 20, in the following language:

We can advance to a consideration of whether or not *the regulating power* is limited by section 20.

The contention of the Government here is that the commission is authorized to call for full reports of the entire business of these petitioners, intrastate as well as interstate, while petitioners say that no such authority is given or could be given.

The broad object of section 20 evidently was to clothe the commission with authority to call for any and all information which would enable the commission to act intelligently in the lawful exercise of its delegated power of rate regulation. Of course, without some precise knowledge of traffic conditions and of interstate business, the reasonableness of rates and fares relating to such business would be impossible of determination. But Congress has expressly restricted the authority to call for reports and to prescribe the form of such reports to common

carriers subject to the provisions of the act. It is impossible to read section 20 as independent of section 1 imposing this limitation. And inasmuch as the act has only to do with interstate commerce and carriers engaged in interstate commerce, only such carriers can be included within those which must respond to the calls for information and comply with the requirements of the commission in matters of accounting. This being true, inasmuch as the reports of affairs, accounts, finances, and like things of the carriers are evidence for the ascertainment of facts relating to the interstate business, which alone is the proper subject of regulation, the scope of the right to call for the report is confined by the nature of the business to be set forth within the report when made. As a correlative proposition, the obligation upon the carrier, subject to the provisions of the act, is to report such business as is interstate and not exempt, and under section 20 there is no obligation upon it to report other business.

Furthermore, the act only confers the right to prescribe how accounts of business properly the subject of regulation shall be kept, and no duty rests upon the carrier to obey orders prescribing methods or forms of accounting except for such business. It is said by the Government, however, that, conceding lack of power to regulate any commerce except that which is carried on under common arrangement, nevertheless the in-

terstate and intrastate operations of these water carriers, petitioners, are so commingled that it is impractical to obtain information of the interstate traffic without full knowledge of the intrastate concerns. The answer to these suggestions is in the text of the law, which expresses the mind of Congress and limits all authority to the regulation of carriers subject to the provisions of the act, and which, in this case, are those engaged in transportation of a particular nature—that is to say, interstate, partly by rail and partly by water, used under a common arrangement as already defined.

We recognize that section 20 relates to reports by carriers rather than to the carriage itself, but the power to call for the information in the report is circumscribed by the relation of the report to the thing itself, interstate traffic. A like rule must govern with respect to bookkeeping and accounting methods. The commission, in the exercise of the power to establish a uniform system of accounting, can only lay down forms and rules which relate to the subject itself, interstate traffic not exempt. (Rec., pp. 49, 50.)

This holding is far reaching in its scope. It declares that the commission can not under section 20 call for any information or prescribe any method of bookkeeping as to any business of the carrier except such as the commission can regulate. It is just as applicable to the intrastate business of carriers

by rail as to the intrastate and port-to-port business of carriers by water; and if sustained, annuls the orders of the commission by which the railroad carriers have for many years been required to report their *entire* business, and to keep their books as to *all* their business in accordance with a prescribed method, orders the validity of which have never been seriously questioned by those carriers.

There is nothing in the act to justify such a restriction of section 20. As to the reports of carriers, it provides that:

Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employes and the salaries paid each class; the accidents to passengers, employes, and other persons and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet.

The requirement as to the keeping of accounts and records is as follows:

The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission.

No comment can possibly make plainer this language.

How can the capital stock, the company's indebtedness, the dividends paid, the number of stockholders, the cost of the company's property, franchises and equipments possibly be divided between the business subject to the control of the commission and that not subject to its control? •

Again, how can any limitation be placed upon the requirement to report "the earnings and receipts from each branch of business and from *all sources*; the operating and other expenses; the balances of profit and loss; and a *complete exhibit of the financial operations of the carrier each year, including an annual balance sheet?*"

As to the keeping of books, the commission may prescribe a form for *any and all* accounts, and the carrier is prohibited from keeping any other. It is true that the section is made to apply only to "all common carriers *subject to the provisions of this act,*" but there is here no suggestion that it is further restricted to that *business* of such carrier which is subject to regulation by the commission.

When a carrier subjects himself to the provisions of the act, then section 20 applies to his *entire* business, because the language is so plain that it can not be otherwise construed.

It is said, however, that all intrastate business is excluded from every section of the act by the first proviso in section 1, which reads: "The provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

This provision was inserted to save the constitutionality of the act by expressly excluding intrastate commerce from its regulating features. But it was never intended thereby to exclude from the operation of section 20 *the information which pertains* to intrastate commerce. This proviso applies only to the *transportation, receiving, storage, and handling* of intrastate shipments. But section 20 does not pertain at all to the *transportation or handling* of commerce, but relates alone to the

keeping of accounts and submission of reports for the information of the commission.

That clause of section 15, which provides that "Any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water" is also relied upon by petitioners, but this provision has no bearing on the question here involved.

The act of February 13, 1893 (ch. 105, 27 Stat., 445), and sections 4282 and 4283 of the Revised Statutes, and probably other statutes, declare certain principles relating to liability for damages of owners of vessels, and the above-quoted clause was intended only to prevent a repeal of those provisions by implication. If it had the effect here contended for, it would nullify the entire act as to all shipments by water. But certainly, notwithstanding this clause, the commission has the power to regulate the rates for carrying commerce by water lines under an arrangement with rail carriers for a through shipment, and such a water carrier is liable to prosecution for the violation of any criminal provision of the act; and section 20 is no more affected by said clause than any of the other provisions therein.

The learned court concedes that when a special matter is under investigation by the commission even on its own motion, it then has the power to inquire into all of the carrier's business; and attaches some weight to the fact that the word "in-

formation" is used in section 20, while nothing is there said about an "investigation." But there is nothing in the act which places a greater restriction upon an inquiry for general information than upon an inquiry to ascertain the facts regarding a matter under special investigation. This is conclusively shown by section 12, the pertinent part of which reads as follows:

That the commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it was created; and the commission is hereby authorized and required to execute and enforce the provisions of this act.

This clearly applies to all kinds of inquiries. In fact, there is no reason why different rules should apply to a preliminary inquiry and a special investigation. It is made the duty of the commission to enforce every provision of the act, and without the means of acquiring information as to all the business of the carrier there would be many violations which they could never detect. It had as well be said that the power of the grand jury to obtain evidence should not be as broad as that of the trial court.

Congress understood that the reports and accounts which the commissioners were authorized to require of the carriers were to include their entire business.

A casual reading of the discussions, especially in the Senate, upon this question when the Hepburn bill was under consideration will show that no other thought entered the mind of anyone than that these reports and the accounts of the carriers were to include their entire business. For illustration, Senator Foraker expressed fear that the fact that they were to include intrastate business would render this section unconstitutional. To this suggestion Senator Tillman said:

Can the Senator from Ohio conceive of any method of bookkeeping by which the business of the railroads, intrastate and interstate, could be separated? All classes of business are received every day, in the same office by the same agent, and entered on the same set of books, right on through. They would not undertake to divide the two. But I will point to the Senator that in the paragraph beginning on line 14 the words occur: "The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this act." It does not say a word about a carrier who is engaged in intrastate commerce alone. Therefore I can not see any force in the Senator's objection. The bill,

as we now have it, or are trying to get it, does not require any books in regard to intrastate commerce. It deals only with carriers subject to this act, and those are the interstate-commerce railroads.

Senator Foraker replied:

I was going to suggest to the Senator that there is difficulty about keeping them separate, and the carriers may not see fit because of that difficulty to undertake to keep the accounts separate. But there is no difficulty whatever about the legislation that we should enact, because the limitations of our power are well known and recognized.

After a few additional remarks, Senator Fulton said:

I ask the Senator (Foraker) if he does not think that, as a condition on which they may engage in interstate commerce, Congress may require them to keep all of their books in reference to carrying subject to inspection by the agents of the Government? May not Congress require that as a condition on which they are permitted to enter into interstate commerce?

To this question Senator Foraker replied:

There is great force in that. It may be that the Senator is right about that. I think, however, we could easily avoid any trouble about it by putting in the limitation I have suggested; but I do not want to press it.

And after a few remarks made by Senator Dryden, Senator Nelson said:

In reference to the objection made by the Senator from Ohio (Mr. Foraker) I want to say that, in the first place, you can not well segregate, as the Senator from South Carolina (Mr. Tillman) has pointed out, from day to day the interstate business and the local business. In the next place, in connection with enforcing a regulation of interstate commerce, we have a right to impose this condition, and in order to make it effective not only to know what their interstate traffic is, but also what their local traffic is. (Cong. Rec., vol. 40, pt. 7, pp. 6802, 6803.)

II.

Congress has the power to establish rules and regulations requiring a carrier engaged in interstate commerce to keep its books as to its entire business in the manner and form prescribed by the commission, and to file with the commission reports giving full information concerning its entire business.

In support of this general contention the United States relies upon the following propositions:

First. The requirement that carriers by water subject to the provisions of the interstate commerce act keep a record of their entire business by a prescribed method of bookkeeping, and report their entire business to the Interstate Commerce Commission, has a real and substantial relationship to the interstate commerce carried by the carriers

which is subject to regulation by the commission; and Congress, therefore, has the power to impose such requirement regardless of its connection with, and the effect it may have upon, the carrier's intra-state and port-to-port business.

Second. Information concerning that part of a carrier's business which is not subject to regulation by the Interstate Commerce Commission is essential to a proper enforcement and administration of the interstate-commerce law; and Congress has the power to require the production of all information which is material to the enforcement of one of its valid Statutes.

These propositions are maintainable from the following considerations:

1. *The powers and duties of the commerce commission are of such character that they can not be properly executed and performed without full and complete information concerning the entire business of carriers subject to the act.*

By section 12 of the act the duty is imposed upon the commission to execute and enforce the provisions of the act. Among the acts declared unlawful are the following:

- (1) The issuance of free passes.
- (2) The transportation of commodities in which the carrier is interested.
- (3) Unjust discrimination in charges, or allowing rebates or drawbacks.
- (4) Granting unreasonable preferences.

(5) The charging or receiving a greater compensation for a shorter than for a longer haul over the same line of road.

(6) The entering into a combination with another carrier for the pooling of freights of different and competing railroads.

(7) The deviation by a carrier in its charges from the published rates.

(8) Refusing information with reference to rates.

(9) The entering into any combination or agreement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination.

(10) Falsely billing, classifying, or weighing, or making a false report of weight, or any other device in order to permit any person to obtain transportation of property at less than the regular rate.

(11) Inducing a carrier to discriminate unjustly in one's behalf.

In addition to its duty of seeing that all offenders against these various provisions are prosecuted, by section 13 it is provided that on complaint of any—

person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier,

or of any State railroad commission, or, *if it sees proper, on its own motion*, the commission shall

make a full investigation of the matter complained of; and section 15 provides that whenever, after a full hearing of such matter, the commission—

shall be of the opinion that any rates are unreasonable, or that any practices of the carrier are unjustly discriminatory, they shall prescribe a reasonable maximum rate, or a fair and just practice.

And, under another paragraph of this section, the commission is authorized, whenever a schedule is filed with it stating a new individual or joint rate or classification, regulation, or practice affecting any rate—

either upon complaint or *upon its own initiative without complaint*, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing—

the operation of the schedule may be suspended for a designated period of time; and, under still another paragraph, it is authorized to establish through routes and joint classifications and rates as the maximum to be charged, and may prescribe the division of such rates.

It will thus be seen that there is no phase of interstate commerce business conducted by the carriers subject to the provisions of the statute which has

not been placed under the supervision of the commission.

It is manifest, therefore, that the commission must have at hand practically every item of information concerning the carrier's business; and it was to enable it to secure this information that sections 12 and 20 were enacted.

2. The information sought by the Interstate Commerce Commission has a material and substantial relation to the interstate commerce carried by petitioners, which is subject to regulation by the commission; and such information is essential to a proper administration of the interstate commerce law.

The following facts are of such common knowledge that the courts will take judicial knowledge thereof:

With reference to carriers by rail, it is impossible to apportion with any degree of accuracy the expenses incurred in handling interstate traffic and State traffic, the reason being that the way and structures and the equipment are all devoted indiscriminately to both kinds of traffic, and also many expenses chargeable to traffic expenses or general expenses are incapable of satisfactory assignment between the two classes of business. The problems presented in attempting to separate the expenses of water carriers so as to show the cost of performing such transportation as is subject to the act separately from the cost of performing such transpor-

tation as is not subject thereto, are very much the same as those incident to carriage by rail, except the complication is not quite so great on account of it being unnecessary for them to maintain a way; but all vessels, tugs, lighters, docks, wharves, buildings, crews, offices, and other facilities of carriage by water are devoted indiscriminately to all classes of traffic. Furthermore, it is impossible to make a separation of a carrier's accounts showing its investments in property and equipments, and this is also true with respect to the accounts and outstanding obligations of carriers in the shape of funded and other debts, as well as its capital stock or shares of interest, surplus, and many other items of both assets and liabilities appearing upon a carrier's balance sheet; and no statement which shows less than the entire business can be adequate for the commission's purposes. In determining the reasonableness of fares and rates, or whether they are confiscatory, it is needful that the commission have the greatest amount of light upon the carrier's income and expenditures and its financial condition; and unless the commission obtains reports based upon a uniform system of accounts, showing the results from the operation of all the business conducted by carriers subject to the provisions of the act, and a full statement of their financial condition, it would be comparatively easy for them to so keep their accounts and render their reports as to defeat the purpose of the law, and to conceal the

true results of their operations by assigning an unfair proportion of the expense of conducting their business to that portion of the traffic subject to the jurisdiction of the commission, or by failing to report the full and fair amount of revenue derived from interstate business.

A consideration of any statement which might be made showing the results from operation in the conduct of a carrier's interstate business alone would not be adequate to enable the commission to act intelligently, for the reason that it could not therefrom be determined whether or not an unfair proportion of the expenses common to both intrastate and interstate traffic had been assigned to the interstate traffic. If the information given the commission be confined to a portion only of the accounts of water-line carriers, an easy way would be opened by which such carriers could give illegal privileges to shippers without danger of discovery by an examination of their accounts, because if any part of the official record of transportation may be closed to investigation by the commission's examiners it is that portion of the accounts that will be chosen for the recording of questionable transactions; and with reference to rebates, a shipper could easily make a traffic agreement covering interstate traffic dependent upon concessions in rates and service on intrastate traffic—that is, the rebates would appear only in the records of intrastate traffic; and the distribution sheets on all traffic must be subject

to examination in order to properly interpret the distribution sheets which pertain to any particular class of traffic.

If the traffic represented by such a large amount of revenue as that derived from intrastate and, in case of water lines, port-to-port traffic, could be excluded from investigation by the commission's board of examiners, it would subject the carriers to the greatest temptation to conceal evasions of the law in the accounts of their intrastate business, and would practically destroy the influence the commission now exercises through its administration of the twentieth section of the act, and would defeat the purpose of publicity which Congress had in mind when it enacted that section. The condition would in some respects be worse as to boat lines than as to railroad companies, because, as to carriers by rail, the commission, by acting in conjunction with the State commissions, could to some extent correct the evil arising from the inability to investigate the carriers' accounts of State traffic; but no such remedy is possible in the case of boat lines. The evil would be still greater if petitioners' contention should be supported that information can not be obtained as to its interstate port-to-port traffic, but must be limited alone to such traffic as is covered by joint waybills to which railroads are a party, or a through bill of lading or other arrangement for through carriage. This would mean that information with reference to traffic from Duluth to

Buffalo, from Portland to Baltimore, or from New York to New Orleans could not be obtained; and the carrier by rail which desires to rebate could ask no better opportunity to make use of the accounts of the boat lines to cover up illegal payments, the boat lines to be reimbursed by a distribution on joint traffic more favorable to them than would otherwise be granted. Hence any limitation of the field of investigation, or any limitation of the application of the commission's system of accounts, which is but a preliminary condition to efficient investigation, would open the door to practices not in harmony with the purpose of the interstate commerce act. The reasons why the statistics of the commission command universal confidence are, that they are comprehensive, covering every transaction of a corporation subject to the jurisdiction of the commission, and they do not admit of any fanciful rules of apportionment or estimate; and should this contention of the boat lines be conceded, and should the railroads, express companies, and telegraph companies avail themselves of the right thus established and make partial reports of traffic and expenses to the commission, the influence now exerted by the commission in its administration of section 20 of the act would be annihilated. A carrier corporation is a unit, its balance sheet summarizes all of its transactions, and if certain accounts are closed to examination by the board of examiners, any report which the board might make would be exposed to justifiable suspicion; and it is essential

that the examiners should check every item entering into the balance sheet in order to enable them to render trustworthy reports in reference to any particular item or set of transactions.

Counsel for petitioners especially urge that the accounts of the carriers relating to the amusement parks, and the sources of revenue therein, have no relation to any character of commerce, and hence the income derived therefrom, or the expenses incident thereto, are wholly immaterial. How effectively the accounts of those parks may be used is illustrated by some facts stated in the course of a speech made by Senator La Follette during the debates on the Hepburn act, to wit:

I shall presently show how the whole system of railway accounting has been built up with a view of concealing these transactions and of concealing the earnings of the railways from year to year up to the present time. * * *

As an example, Mr. Sterne cites the expenditure *one year* by the Erie of \$700,000 as a *corruption fund and for legal expenses*, which was carried to the "*india-rubber account*" and charged to the cost of construction. After the capital of the New York Central was doubled in 1869 they had a stock account, "which," says Mr. Sterne, "was out of all harmony with their construction account, and, for 10 years following, every year *varying*, from 3 to 8 per cent of this water was artificially carried into the construction account, and the capital account

balanced. * * * In the same way the balances were forced in the Erie Railway Company when Mr. Gould took \$40,000,000 of stock of the Erie Railway Company, out of its books, and sold it *on the street*, and appropriated the money to his *own use*, and there was not a dollar's worth of construction to represent it; and when reorganization took place the balance of the Erie Railway Company was forced to meet *that violence done to the stock account*. (Cong. Rec., vol. 40, pt. 6, p. 5717.)

The importance of information concerning the entire business of the carriers, and in what respect it relates to their interstate commerce, is well shown by the views expressed by many of the members of both Houses in the course of the debates. For illustration, Mr. Townsend said:

The bill also provides for the widest publicity of railroad affairs. This, I believe, is one of the most potent influences for good. The carrier being a public servant, its methods should be subject to scrutiny; therefore, we provide the method by which its accounts shall be kept. We provide for publicity of the contracts and agreements, written or otherwise. We provide that Government experts shall have the right, not simply the permission, to inspect all railroad accounts and business methods at all times, and we impose heavy penalties for violation of any provisions of the law. False reports or a refusal to make full disclosure subjects the

carrier and its agents not only to a heavy fine, but imprisonment. (Cong. Rec., vol. 40, pt. 2, p. 1769.)

Mr. Esch said:

Mr. Chairman, your committee realized that in order to make rate regulation through the Interstate Commerce Commission effective; in order to secure the suppression of rebates and unlawful discriminations and preferences; in order to secure the necessary evidence to make prosecutions for such offenses successful, it was necessary to give to the commission visitatorial powers of the broadest and most thorough character. We believe that section 7, amending section 20 of the original interstate commerce act, gives the commission, through its own members and through its special agents and examiners, these powers.

At present almost every carrier has its own system of bookkeeping, and there is uniformity among carriers only in the method of publishing the reports at present required by law. Uniformity in bookkeeping would greatly lessen the task of Government inspection. It is for this reason that we have provided in this bill that "The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys."

And it further provided that "The commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, and memoranda than those prescribed or approved by the commission."

In order that complete and accurate statistics of railways may be secured for the information of the public, not only annually, but at any time, this bill requires all carriers subject to this act to file annual, monthly, and even special reports on forms to be prescribed by the commission. The necessity for a uniform system of bookkeeping as to accounts, records, and memoranda kept by carriers and the necessity of annual, monthly, and special reports of their earnings and expenses and the right of thorough and frequent inspection on the part of the agents of the Government is shown by the loose and deceptive methods practiced by many carriers in the keeping and publication of their accounts. (Cong. Rec., vol. 40, pt. 2, p. 2007.)

Senator Heyburn said:

If we are going to invest the Interstate Commerce Commission with the power and the duty of determining what shall constitute fair and reasonable rates, we have got to know upon what that calculation is to be based. We must know the investment of the railroad company; we must know the cost of operating it; we must know its in-

debtedness; we must know whether or not its stock represented the actual value of the road, and what relation the bonded indebtedness bears to the value of the road. (Cong. Rec., vol. 40, pt. 6, p. 5293.)

3. *The following cases, among many others, establish by analogy the contention that information concerning the entire business of a carrier subject to the provisions of the act has such a real and substantial relation to interstate commerce as to authorize Congress to require its production to the commission.*

The Daniel Ball (10 Wall., 557) involved the question whether a steamer plying between two points in the same State, but which from time to time, without any agreement for a through shipment, carried commerce between that and other States, was required to procure a license under an act of Congress which provided that—

It shall not be lawful for the owner, master, or captain of any vessel, propelled in whole or in part by steam, to transport any merchandise or passengers upon “the bays, lakes, rivers, or other navigable waters of the United States,” after the 1st of October of that year without having first obtained from the proper officer a license under existing laws,

and it was held that the act was applicable to that steamer.

In *Smith v. Alabama* (124 U. S., 465, 479, 480) the Supreme Court sustained an Alabama statute

which prescribed qualifications for engineers operating locomotives within that State, upon the ground that Congress, up to that time, had not legislated upon the subject; but the court expressly declared that—

It would, indeed, be competent for Congress to legislate upon its subject matter, and to prescribe the qualifications of locomotive engineers for employment by carriers engaged in foreign or interstate commerce. It has legislated upon a similar subject by prescribing the qualifications for pilots and engineers of steam vessels engaged in the coasting trade and navigating the inland waters of the United States while engaged in commerce among the States (Rev. Stat., title 52, secs. 4399—4500), and such legislation undoubtedly is justified on the ground that it is incident to the power to regulate interstate commerce.

* * * * *

The power might with equal authority be exercised in prescribing the qualifications for locomotive engineers employed by railroad companies engaged in the transportation of passengers and goods among the States, and in that case would supersede any conflicting provisions on the same subject made by local authority.

Certainly the relationship between licensing a steamboat which carries some interstate commerce along with its intrastate business and the licensing of an engineer who sometimes pulls interstate as well as intrastate commerce has no more real and

substantial relationship to such commerce, than has the requirements imposed upon petitioners in these cases.

In the *Northern Securities Co. case* (193 U. S., 197, 335) it was insisted on behalf of the company that its acquiring the stock of companies which were engaged in interstate transportation did not bring it into such relationship to interstate commerce as to subject the company itself to the control of Congress; but this court held to the contrary.

In *Interstate Commission v. Illinois Central Railway Co.* (215 U. S., 452, 474) the railroad company filed a bill seeking to enjoin the enforcement of an order of the Interstate Commerce Commission requiring the company to take into consideration, in the distribution of cars among certain coal mines, private cars, the fuel cars of other railroad lines, and also the fuel cars of the defendant itself. The circuit court sustained the bill in so far as it applied to the fuel cars of the defendant company, on the theory that these cars laden with coal purchased from the mining companies never entered interstate commerce, as the coal was delivered to the railroad company at the tipple, and commerce there ended. After stating this contention of the company and the holding of the circuit court, this Court, speaking through Mr. Justice (now Mr. Chief Justice) White, said:

Under these conditions it is clear that doubt, if it exist, must be resolved against

the soundness of the contentions relied on. But that rule of construction need not be invoked, as we think, when the erroneous assumption upon which the proposition must rest is considered, its unsoundness is readily demonstrable. That assumption is this, that commerce in the constitutional sense only embraces shipment in a technical sense, and does not, therefore, extend to carriers engaged in interstate commerce, certainly in so far as so engaged and the instrumentalities by which such commerce is carried on, a doctrine the unsoundness of which has been apparent ever since the decision in *Gibbons v. Ogden* (9 Wheat., 1) and which has not since been open to question. It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one.

The corporation, as a carrier engaged in interstate commerce, being then, as to its interstate commerce business, subject to the control exerted by the act to regulate commerce, and the instrumentalities employed for the purpose of such commerce being likewise so subject to control, we are brought to consider the remaining proposition (p. 474).

As the purchase of the coal from the mining company was complete when it was delivered to the railroad company at the tippie, *and as such purchase and delivery was entirely an intrastate transaction*, in what way was interstate commerce substantially or materially affected by the distribution of the fuel cars of the company? The decision appears to have been based on the ground that the equipment of the road, including those cars, were *instruments* of interstate commerce. But if the fact that these cars were *instruments* of interstate commerce brought them into such relationship to such commerce as to subject them to regulation by the commission, even when engaged *wholly* in intrastate commerce, or *in no commerce at all*, as they were in that case, certainly the relationship between interstate commerce and the information here sought by the commission is such as to render it accessible to the commission. The relationship may be different, but it can be here more easily traced than in that case.

However, the remark of the court that—

It necessarily follows that such cars are embraced within the governmental power of regulation which extends, *in time of car shortage*, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one,

indicates that the commission could not require the carrier to take those fuel cars into consideration in distributing cars among the coal companies, ex-

cept in time of car shortage, because, when all the companies were receiving sufficient cars to enable them to promptly fill all orders, such order of the commission would not affect interstate commerce; but, in time of car shortage, if these cars were not distributed, fewer loaded cars consigned outside the State would be shipped. If this be the real ground of the decision, it but shows that while the relationship between an order of the commission and interstate commerce must be real and substantial, yet it is not essential that it be immediate.

In *Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission* (221 U. S., 612-618) it was sought to annul an order made by the Interstate Commerce Commission, wherein it was required that the carriers subject to the hours of service act of March 4, 1907 (ch. 2939, 34 Stat., 1415), make monthly reports, under oath, showing the instances where employees subject to that act had been on duty for a longer period than that allowed. It was insisted that the act was unconstitutional because "its prohibitions and penalties are not limited to interstate commerce, but apply to intrastate railroads and to employees engaged in local business." Upon this question the court, speaking through Mr. Justice Hughes, said:

But the argument undoubtedly involves the consideration that the interstate and intrastate operations of interstate carriers are so interwoven that it is utterly impracticable for them to divide their employees in such

manner that the duties of those who are engaged in connection with interstate commerce shall be confined to that commerce exclusively. And thus, many employes who have to do with the movement of trains in interstate transportation are, by virtue of practical necessity, also employed in intrastate transportation.

This consideration, however, lends no support to the contention that the statute is invalid. For there can not be denied to Congress the effective exercise of its constitutional authority. By virtue of its power to regulate interstate and foreign commerce, Congress may enact laws for the safeguarding of the persons and property that are transported in that commerce and of those who are employed in transporting them (p. 618).

And it was held that "the length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends."

In *Southern Railway Co. v. United States* (222 U. S., 20, 26) the constitutionality of the safety appliance act of March 2, 1903 (32 Stat., 943, ch. 976), was attacked, because it applied "to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce." In one of the counts of the information the allegation relied on was that the cars were moving over a line of road which was commonly used for hauling interstate commerce, it not appearing

that the cars in question, or any car in that train, was carrying interstate commerce. The validity of the act and of the entire information was sustained; and hence the fact that a car is hauled upon a line over which interstate commerce commonly flows, *within itself*, brings that car into such relationship to that commerce as to make it subject to congressional regulation. The language used in the able opinion handed down through Justice Van Devanter has a very material bearing upon the question here under consideration, but it is so fresh in the minds of the court that it need not be quoted.

4. *The following authorities show that information concerning the entire business of a carrier subject to the provisions of the act is essential to its proper enforcement; and that Congress has the power to require its production at the instance of the commission.*

St. Louis & S. F. Ry. Co. v. Gill (156 U. S., 649) involved the validity of an act of the Legislature of Arkansas, which fixed the maximum rate on certain lines of railroad at 3 cents per mile. It was insisted by the railroad company that this rate deprived it of its property without due process of law and without just compensation, and it offered to prove that the particular line in question had never been able to earn from all sources an amount which, after paying for expenditures, would yield a profit equal to 1 per cent upon the capital stock actually paid in cash and used in the construction of its road, that it

could not perform the service of carrying any passenger over its railway for the sum of 3 cents per mile, but that the sum actually required to be expended for such service was 3.3 cents per mile, that the revenue which it had received from all sources other than the passenger traffic would not be sufficient to enable it to make good the amount it would lose on its passenger business, and that defendant had never been able from all sources of revenue derived from said line to earn an amount, after paying expenses, which would yield a profit of 1 per cent upon the actual cash cost of the road.

However, both the Supreme Court of Arkansas and this court held that the inquiry could not be limited to the revenue derived from that particular branch of road in determining whether or not the rates were confiscatory, *but that it should extend to the entire system owned by the defendant company.*

In *Minn. & St. L. R. R. Co. v. Minnesota* (186 U. S., 257) the same principle was applied in determining when a rate is reasonable.

When petitioners made arrangements for joint traffic with one or more railroad companies, they placed it within the power of the commission, either at the instance of other parties or on their own motion, to investigate and to determine the reasonableness of their joint rates with railroad carriers, and to fix maximums for such rates provided they were not confiscatory.

In such an inquiry knowledge of the revenues derived from petitioners' joint traffic alone would be of practically no value to the commission. Under the Minnesota case the commission would have to know the amount of their entire investment and the revenues and expenses of their entire business in order to fix reasonable maximum rates; and under the authority of *St. Louis & S. F. Ry. Co. v. Gill*, to determine whether a rate under investigation by them is confiscatory, they must know the amount of revenues derived by the carriers from *all* sources and their *total* expenses. Therefore, in every inquiry as to rates, whether in a preliminary investigation or in a litigation involving their validity because confiscatory, information concerning the *entire* business of the carrier is most essential.

In *Interstate Com. Com. v. Brimson* (154 U. S., 447, 465, 470, 472) the facts were that the commission was, on its own motion, engaged in the investigation of the Illinois Steel Co., a corporation of Illinois, the matter having been brought to the attention of the commission by an informal complaint that this company had caused to be incorporated under the laws of that State certain railroad companies for the purpose of operating its switches and sidetracks at South Chicago and Joilet, and engaging in traffic by continuous shipments from cities without and within the State of Illinois in connection with certain other railroad companies.

In the investigation the commission issued a subpoena duces tecum to one Kief, secretary and auditor of the railroads in question, directing him to appear before that body and bring with him the stock books of those companies; and a like subpoena was issued to one Sterling, vice president of the steel company, commanding him to appear before the commission and produce certain books. The witnesses, Kief and Sterling, appeared, but refused to produce the books. Application was thereupon made to the circuit court, in accordance with the provisions of the interstate-commerce act, to enforce the production of the books. The circuit court held that the Interstate Commerce Commission was an administrative body, and that the proceedings did not constitute a cause or controversy to which the judicial power of the United States could be extended. This decision was reversed by the Supreme Court; and in the course of its opinion, which was delivered by Mr. Justice Harlan, the court said:

It was not disputed at the bar, nor indeed can it be successfully denied, that the prohibition of unjust charges, discriminations, or preferences, by carriers engaged in interstate commerce, in respect to property or persons transported from one State to another, is a proper regulation of interstate commerce, or that the object that Congress has in view by the act in question may be legitimately accomplished by it under the power to regulate commerce among the sev-

eral States. In every substantial sense such prohibition is a rule by which interstate commerce must be governed, and is plainly adapted to the object intended to be accomplished. The same observation may be made in respect to those provisions empowering the commission to inquire into the management of the business of carriers subject to the provisions of the act and to investigate the whole subject of interstate commerce as conducted by such carriers, and in that way to obtain full and accurate information of all matters involved in the enforcement of the act of Congress. *It was clearly competent for Congress, to that end, to invest the commission with authority to require the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents relating to any matter legally committed to that body for investigation. We do not understand that any of these propositions are disputed in this case.*

And the court quoted the following pertinent remarks, made by Chief Justice Marshall in *McCulloch v. Maryland* (4 Wheat., 316, 421, 423):

Where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground. This court disclaims all pretensions to such a power.

Interstate Commerce Commission v. Baird (194 U. S., 25, 43, 44) arose out of an attempt on the part of the commission to obtain evidence in an investigation of the Philadelphia & Reading, Lehigh Valley, and other railroad companies which were interested in the anthracite coal region. On the hearing the commission had summoned certain witnesses who produced certain contracts which the commission desired to inspect, but the witnesses refused to permit them to be used in evidence. The circuit court held that the contracts were irrelevant to the matter under investigation, *upon the ground that they related solely to intrastate transactions*. These contracts were between certain coal companies and independent operators engaged in mining coal in Pennsylvania, but the testimony showed that the coal companies making the contracts were principally owned by the railroad companies; and this court therefore held that the contracts were relevant to the matter under inquiry, the court, speaking through Mr. Justice Day, saying:

Here is a railroad company engaged at once in the purchase of coal through a company which it practically owns and the transportation of the same coal through different States to the seaboard. Why may not the Interstate Commerce Commission, under the powers conferred and under this complaint, inquire into the manner in which this business is done? It has the right to know how interstate traffic is conducted, the relations between the carrier and its ship-

pers, and the rates charged and collected. We see no reason why contracts of this character, which have direct relation to a large amount of its carrying trade, can be withheld from examination as evidence by the commission. These contracts were made by the officials of the railroad companies, who were also officials of the coal companies, after protracted conferences. Upon the ground that they pertained to the manner of conducting a material part of the business of these interstate carriers, which was under investigation, we think the commission had a right to demand their production. * * *

The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation, and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law, where a strict correspondence is required between allegation and proof (p. 44).

In *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, supra, it was insisted that the commission had no authority to require the reports called for by its order. Section 4 of the act provided:

It shall be the duty of the Interstate Commerce Commission to execute and enforce the provisions of this act, and all powers

granted to the Interstate Commerce Commission are hereby extended to it in the execution of this act.

After quoting the provisions of section 20 of the interstate commerce law, authorizing the commission to require monthly reports of earnings and expenses and periodic or special reports concerning any matter within its jurisdiction, the court said:

To enable the commission properly to perform its duty to enforce the law it is necessary that it should have full information as to the hours of service exacted of the employees who are subject to the provisions of the statute, and the requirements to which we have referred are appropriate for that purpose and are comprehended within the power of the commission. (221 U. S., 622.)

Here was a distinct recognition of the validity of section 20 in a case involving facts practically identical in principle with those of the present case, as the employees about whom the carriers were required to report were, when working overtime, undoubtedly handling both interstate and intrastate commerce.

In *Flint v. Stone Tracy Company* (220 U. S., 107) (corporation tax cases), the following provisions of the corporation tax law (36 Stat., 112 *et seq.*, ch. 6, sec. 38) were attacked as unconstitutional. The sixth section of the act provided that "when the assessment shall be made * * * the returns * * * shall be filed in the office of the

Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such." This provision was so amended by the act of June 17, 1910, that the returns are open to inspection only upon the order of the President, under rules and regulations prescribed by the Secretary of the Treasury and approved by the President. As to whether or not this provision was valid, the court said:

The contention is that the above section as originally framed and as now amended could have no legitimate connection with the collection of the tax, and in substance amounts to no more than an unlawful attempt to exhibit the private affairs of corporations to public or private inspection, without any substantial connection with or legitimate purpose to be subserved in the collection of the tax under the act now under consideration. But we can not agree to this contention. The taxation being, as we have held, within the legitimate powers of Congress, it is for that body to determine what means are appropriate and adapted to the purposes of making the law effectual. In this connection the often quoted declaration of Chief Justice Marshall in *McCulloch v. Maryland* (4 Wheat., 316, 421) is appropriate: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, and which are plainly adapted to that end, and which are not prohibited but are consistent with the letter and spirit of the Constitution, are constitutional."

Congress may have deemed the public inspection of such returns a means of more properly securing the fullness and accuracy thereof. In many of the States laws are to be found making tax returns public documents and open to inspection. (220 U. S., pp. 175, 176.)

The Constitution vests no power by special language to require returns of this character to be made by corporations, but it arises incidentally out of the power to impose an excise tax upon corporations. If Congress has the authority to exact such information from corporations as an incident to its taxing power, there is no reason why it has not the same authority as an incident to its constitutional power to regulate interstate commerce. The incidental powers arising out of one provision is no more restricted than the incidental powers arising out of the other.

EMPLOYERS' LIABILITY CASES.

The *Employers' Liability cases* (207 U. S., 463) are specially relied upon by petitioners; but when carefully considered they are not in conflict with the contention of the Government.

In those cases it was first insisted that the employers' liability act was unconstitutional because Congress had undertaken not to regulate interstate commerce, but to regulate the relationship between the carriers and their employees, or, in other words, the internal affairs of the companies. This posi-

tion was overruled by the court, the entire court expressing the view that it was not tenable. The ground upon which the act was declared unconstitutional by the majority is thus stated by Mr. Justice (now Mr. Chief Justice) White, in delivering the opinion of the court:

The statute is addressed to the individuals or corporations who are engaged in interstate commerce and is not confined solely to regulating the interstate-commerce business which such person may do—that is, it regulates the persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce (p. 497).

And, in illustrating the effect of the act, the court further said:

Without stopping to consider the numerous instances where, although a common carrier is engaged in interstate commerce, such carrier may, in the nature of things, also transact business not interstate commerce, although such local business may indirectly be related to interstate commerce, a few illustrations showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of the power which is exerted by the statute. Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a State. Take again the same road having shops for repairs, and it may be for construction work,

as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest, besides, the possibility of its being engaged in other independent enterprises. Take a telegraph company engaged in the transmission of interstate and local messages. Take an express company engaged in local as well as in interstate business. Take a trolley line moving wholly within a State as to a large part of its business and yet as to the remainder crossing the State line.

And it is this language that counsel specially relies upon.

But the language here used must be read with reference to the facts which the court had before it, and the particular point which was then under discussion and was decided. What Congress had undertaken to do was, in every instance where an employee of a company engaged in interstate commerce was injured through the negligence of another employee, to render the company liable for the damages arising from such injury. For illustration, suppose the company had a repair shop and an employee working on the repair of a car therein received, through the negligence of another employee working in such shop, an injury. Congress had undertaken to say that the company was liable for the negligence of such employee. The court had, therefore, before it the question whether or not the negligence of an employee, which, under such circumstances, caused an injury to another

employee, had any substantial relationship to interstate commerce, and they were unable to find any such relationship. The simple fact that the two men happened to be working on a car that might subsequently carry interstate commerce, or that they were working for a company which through other employees engaged in interstate commerce, could in no way materially affect such commerce.

But there is no suggestion in these cases, nor is there any implication by analogy, that Congress has not the power to require the production of any and all information which may have a material bearing upon any inquiry the commission can legitimately make.

In the Employers' Liability cases, decided January 15, 1912, this court held that Congress may enact a law defining the circumstances under which an interstate carrier is liable for an injury to an employee which occurs while such employee is engaged in interstate commerce; and, of course, it is immaterial to what extent he may at the same time be engaged in intrastate commerce.

III.

Section 20 of the interstate commerce act is not unconstitutional on the ground that it authorizes unreasonable searches and seizures.

The following authorities are conclusive upon this proposition:

The power here vested by section 20 in the Interstate Commerce Commission is expressly recog-

nized in *Hale v. Henkel* (201 U. S., 43-77). That case arose from the refusal of Hale to obey the mandate of a *subpœna duces tecum*; and after the court had held that the subpœna was too sweeping in its terms to be regarded as reasonable, in closing its opinion the court said:

Of course, in view of the power of Congress over interstate commerce to which we have adverted, we do not wish to be understood as holding that an examination of the books of a corporation, if duly authorized by act of Congress, would constitute an unreasonable search and seizure within the fourth amendment (p. 77).

In *Interstate Commerce Commission v. Baird*, supra, the question whether or not a requirement to produce certain contracts that related to local transactions was violative of the fourth amendment to the Constitution securing immunity from unreasonable searches and seizures was specially considered, and it was held that "testimony given under such circumstances presents scarcely a suggestion of an unreasonable search or seizure" (p. 46).

In *Baltimore & Ohio Railroad Company v. Interstate Commerce Commission*, supra, it was contended that to compel disclosure by reports of violations of the law, as required by the commission's order, was contrary to the fourth and fifth amendments. To this contention the court replied: "The order of the commission is suitably specific and rea-

sonable, and there is not the faintest semblance of an unreasonable search and seizure. The fourth amendment has no application." (221 U. S., 622.)

IV.

Section 20 is not unconstitutional on the ground that it vests legislative power in the commission.

The general rule is that Congress has the power to delegate quasi-legislative power to a subordinate body, provided the object to be attained is described with such certainty as to form a guide for the exercise of the delegated power. It is unnecessary to recite authorities showing how specific the directions must be. A casual reading of section 20 shows that there is but little left to the discretion of the commission, *as Congress has prescribed precisely what matters shall be embraced in the reports required.* The provision relating to the power of the commission to require books to be kept in a prescribed way must be read in connection with the substance of the reports required to be made to the commission, and the bookkeeping is required, therefore, to be of such character as to show specifically the entire assets of the carrier and its income and disbursements. Hence, as the matters which must be shown by the reports and the bookkeeping are particularly detailed by Congress, there is nothing left to the discretion of the commission except to prescribe the precise form in which the books are to be kept.

For the foregoing reasons the judgments of the Commerce Court should be reversed, and the petition be dismissed.

J. A. FOWLER,

Assistant to the Attorney General.

BLACKBURN ESTERLINE,

Special Assistant to Attorney General.



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In the Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 879.

THE INTERSTATE COMMERCE COMMISSION AND THE
UNITED STATES, APPELLANTS,

v.

GOODRICH TRANSIT COMPANY.

No. 880.

THE INTERSTATE COMMERCE COMMISSION AND THE
UNITED STATES, APPELLANTS,

v.

GOODRICH TRANSIT COMPANY.

No. 881.

THE UNITED STATES AND THE INTERSTATE COM-
MERCE COMMISSION, APPELLANTS,

v.

WHITE STAR LINE.

No. 882.

THE UNITED STATES AND THE INTERSTATE COM-
MERCE COMMISSION, APPELLANTS,

v.

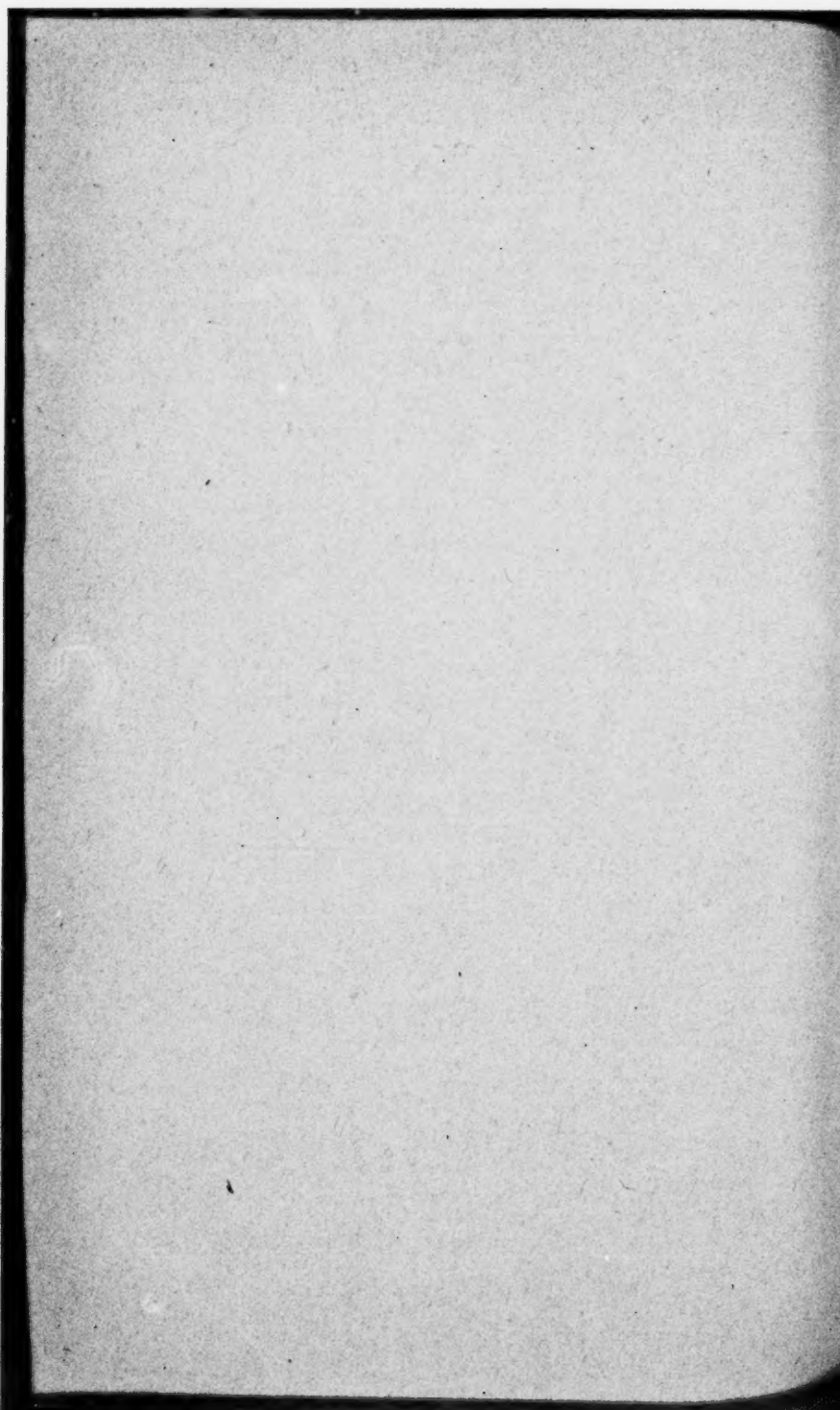
WHITE STAR LINE.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

CHARLES W. NEEDHAM,

Solicitor for the Interstate Commerce Commission.



In the Supreme Court of the United States.

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APPEALS FROM THE UNITED STATES COMMERCE COURT.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

STATEMENT.

These actions were brought by appellees, who are
carriers by water, seeking to annul and enjoin cer-

tain orders of the Interstate Commerce Commission calling for a special statistical report and providing a uniform system of bookkeeping for carriers by water subject to the act to regulate commerce. These orders were entered under, and to carry out, the provisions of section 20 of said act as amended.

Appellees are subject to the act as carriers of interstate passengers and property under a common arrangement with railroads. Their contention is that because they carry intrastate and port-to-port interstate traffic not subject to the act, there is no constitutional power in Congress or the commission to require them to make statistical reports and classify their accounts.

On June 11, 1910, the Interstate Commerce Commission, acting under the authority and to carry out the provisions of section 20 of the act to regulate commerce, entered an order approving a Special Report Series Circular No. 10, calling for statistics from every carrier by water within the jurisdiction of the commission, the report to be verified by oath by the president or other principal officer of such company. This order and the circular were, as stated on the circular, to "enable the commission to determine the form for annual report" from carriers by water. On May 31, 1910, two orders were issued providing for the classification of operating revenue and the classification of operating expenses of carriers by water subject to the act. The purpose of these orders is to

classify the accounts to correspond with the reports and statistics called for in section 20 and to secure a uniform system of accounts, receipts, and disbursements, by carriers by water subject to the act, from which annual and other reports shall be made.

These cases were heard together and determined in the court below upon demurrers to the bills in the first two cases and motions to dismiss the petitions in the remaining cases; the motions being, in effect, demurrers to the petitions.

The opinion of the Commerce Court, printed in record No. 879, beginning at page 28, is summed up in the following words of the opinion:

From these expressions it follows that the theory of the commission in the present cases was erroneous. It acted within its authority when it made an order calling for reports of all business done by the petitioners under through bills of lading where the transportation was partly by railroad from one State to another, or from one place in the United States to Canada, an adjacent foreign country; and it was within its power when it prescribed the system of accounts and the uniform method of keeping accounts for such interstate business; and so far as the orders call for information confined to such traffic, or directly related thereto, and so far as the orders prescribe uniform systems of bookkeeping and accounting for such traffic and such as is directly related thereto, they must be sustained. But, in so

far as the reports called for and the accounting rules prescribed extend beyond such interstate business of the carriers, or include matters of intrastate traffic accounts and affairs and concerns exclusively, they become invasions of the rights of the carriers, and to the extent of such invasions are unlawful.

Upon the foregoing the court decreed that the orders dated the 31st day of May, A. D. 1910, and the 11th day of June, A. D. 1910, be set aside, and that the matter be "referred to the Interstate Commerce Commission to proceed with according to right and justice."

This decision if sustained will be revolutionary and destructive.

For more than twenty years the Interstate Commerce Commission has been laboriously working out a system of reports and classification of accounts and a uniform system of bookkeeping for common carriers subject to the act to regulate commerce. It was recognized at the beginning that these accounts, to be of any value whatever, must cover all the transactions of the carrier. The commission established a statistical bureau and employed the best experts available in the country. They called to their aid the carriers and their accountants and asked information in reference to the existing systems of accounting, and the commission's suggestions as to proposed changes, to the end that the very best possible results for the Govern-

ment, the public, and the carriers might be attained. The first result reached was a system of accounting and reports for carriers by rail. These were accepted and for twenty years the companies, operating now over 240,000 miles of railway, have, without exception, furnished the statistics and reports called for and are classifying and keeping their accounts in accordance with the uniform system of bookkeeping prescribed by the commission. These reports include both interstate and intrastate business.

The commission took up the matter of reports from express companies, sleeping-car companies, and pipe lines, then the carriers by water, and now, under the amended act, is preparing a system of reports and bookkeeping for telegraph and telephone companies. The splendid results which have followed the establishment of these systems of accounts for the railroads, through the hearty co-operation of the carriers, has given to Congress and the public statistical facts regarding rail transportation that is unequalled in the world. To those who have practical knowledge of these affairs, who understand the methods by which transportation is carried on, and who know that interstate and intrastate services and expenses are necessarily intermingled, this decision of the Commerce Court, overturning as it does the practice of twenty years, was not only disappointing but astounding. If this ruling is to become the law of the land, then it will

be imposible to secure a system of accounts and transportation statistics that will be of any value whatever.

The States of the Union have cooperated and are using the same forms of reports and classifications of accounts that are now used by the Interstate Commerce Commission for rail carriers. The States and Federal Government therefore have been working along the same lines for precisely the same results, namely, statistics that will be of value for the purposes of regulation and legislation. It is impossible to state the destructive effect upon the administration of the law regulating transporation that will follow this decision of the Commerce Court if it is upheld.

The first step toward uniformity of management affecting the public is uniformity in accounting; accounts, if they be honest, are the records of administration and of management; the accounts contain—usually in hidden places—the rebate, the preference, and the discrimination which the law forbids. Whether we consider the question of favoritism, of discrimination, of just and reasonable rates, or stability in rates, uniform methods of management and accounting are absolutely essential to effective regulation by Congress and the commission. There is a real and substantial relation between the regulation of accounting methods and the great purposes of the act to regulate interstate commerce.

CONTENTIONS OF THIS APPELLANT.

1. The provisions of section 20 have a real and substantial relation to the execution of the powers and the attainment of the purposes of the act to regulate commerce; therefore Congress has power to require statistical reports from, and a uniform system of bookkeeping by, every common carrier subject to the act, and the Interstate Commerce Commission acted within its statutory power in requiring such reports from, and classification of accounts by, such carriers.

2. Common carriers by water, who have voluntarily filed with the Interstate Commerce Commission joint tariffs under which they operate jointly with railroads in transporting interstate passengers and property over the water portion of through routes partly by railroad and partly by water, are agents of interstate commerce, and as such may lawfully be required to classify their accounts and make statistical reports of their entire business as common carriers.

3. The orders of the Interstate Commerce Commission are not arbitrary, but tend to advance the general purposes of the act, and the orders conform to the requirements of section 20.

4. The Commerce Court erred in holding that "a recast of the forms of reports should be made by the Commission, acting in conformity with the views herein expressed," thereby requiring that

the reports and classification of accounts should only include business partly by railroad and partly by water.

BRIEF AND ARGUMENT.

The appellees proceed upon the theory, and the Commerce Court seems to have taken the view, that calling for a statistical report and requiring a particular classification of all the accounts kept by an agent of interstate commerce is a regulation of all the business carried on by such agent; that the power of the commission over the agent is only coextensive with its power to regulate *traffic* carried by the agent. There is no claim made by this appellant that the Interstate Commerce Commission can regulate intrastate or the port-to-port interstate traffic of carriers by water. Section 20 has nothing whatever to do with the regulation of traffic. It is the exercise of jurisdiction over the agent of interstate commerce, requiring certain reports and providing a method of keeping the accounts of the business in a way deemed appropriate by the commission to prevent favoritism, and to furnish statistics to enable Congress to further legislate and the commission to carry out the purposes of the act. Congress may legislate about the agents, the instrumentalities, and the subjects of interstate commerce as independent factors; it may determine the conditions under which such agents may carry on interstate commerce; it may determine the instrumentalities that may or may not be used

in interstate commerce; it may determine what can and what can not be carried in the channels of interstate commerce. In determining matters with reference to either one of these factors, commerce carried by the agent which is not subject to direct regulation by Congress or the Interstate Commerce Commission may be affected; but because such business or traffic is affected does not render such regulation by Congress or the commission invalid. If a regulation of the agent is to be declared invalid because it indirectly affects traffic not under the direct control of the Federal power, then legislation or regulation affecting an instrumentality, such as the safety-appliance act, or affecting a subject of interstate commerce, as intoxicating liquors, would be invalid for the same reason. To so hold would be contrary to the view taken in a long line of decisions by this court.

Another misconception is that the Commerce Court in its opinion seems to have taken the view that the purpose of requiring reports of all the business of the carrier and of classifying all the accounts kept by it is solely to enable the commission to regulate rates. This is not the sole purpose of section 20, nor is it, indeed, the main purpose. The great purpose in view in the adoption of this section was to prevent discrimination and favoritism; to uncover the secret rebates and devices by which the large shipper is often favored and to enable Congress and the commission to carry out

the objects of the act by further regulation. The discussions in Congress clearly show that these were the principal objects in view in adopting the provisions of section 20. The accounts of secret rebates and devices are often kept in books and memoranda not a part of the general books of account of the carrier; they are sometimes carried into accounts of business supposed to be outside the jurisdiction of the commission. Special advantages to the large shippers may consist in giving abnormally low rates on intrastate traffic, or in carrying such traffic for nothing, as inducement or consideration for the shipper to give the carrier his interstate traffic at the interstate tariff rates; it may consist in advantages given the shipper in other lines of business carried on by the carrier. These are as real and substantial rebates upon the interstate traffic as the direct payment of money would be. These advantages can only be discovered by a study of the financial reports of the carrier's entire business and by making special examinations where such reports show some abnormal conditions as to the traffic. This legislation in section 20 stands primarily for publicity as a prevention of favoritism.

With these preliminary observations we beg to call the attention of the court to a brief of decisions bearing upon these propositions contended for by this appellant.

I.

THE PROVISIONS OF SECTION 20 HAVE A REAL AND SUBSTANTIAL RELATION TO THE EXECUTION OF THE POWERS AND THE ATTAINMENT OF THE PURPOSES OF THE ACT TO REGULATE COMMERCE; THEREFORE CONGRESS HAS POWER TO REQUIRE STATISTICAL REPORTS FROM, AND A UNIFORM SYSTEM OF BOOK-KEEPING BY, EVERY COMMON CARRIER SUBJECT TO THE ACT, AND THE INTERSTATE COMMERCE COMMISSION ACTED WITHIN ITS STATUTORY POWER IN REQUIRING SUCH REPORTS FROM, AND CLASSIFICATION OF ACCOUNTS BY, SUCH CARRIERS.

The power of Congress to regulate the agents, instrumentalities, and subjects of interstate commerce is plenary and applies to each factor of commerce.

The Supreme Court of the United States, speaking through Mr. Chief Justice Marshall, said:

What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in

the Constitution of the United States. (*Gibbon v. Odgen*, 9 Wheat., 1, 196.)

In the same case Mr. Justice Johnson said:

The great and paramount purpose [of the Constitution] was to unite this mass of wealth and power for the protection of the humblest individual; his rights, civil and political, his interests and prosperity, are the sole end; the rest are nothing but the means. * * * Commerce, in its simplest signification, means an exchange of goods; * * * *the subject, the vehicle, the agent, and their various operations*, become the objects of commercial regulation. (*Ibid.*, pp. 223, 229.)

Speaking through Mr. Justice Brown, in reference to the act to regulate commerce, this court said:

The principle objects of the interstate-commerce act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations, or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights. (*Interstate Commerce Commission v. Baltimore & O. R. R. Co.*, 145 U. S., 276.)

Again referring to the powers of the commission the court, speaking through Mr. Justice Brewer, said:

* * * It [the commission] is charged with the general duty of inquiring as to the

management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is no violation of the long-and-short-haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right which is the great purpose of the interstate-commerce act shall be secured to all shippers. (*Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 506.)

Again, Mr. Justice White, now the Chief Justice, speaking for this court, said:

The commission was endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs, their accounts, and their methods of dealing, and generally to enforce the provisions of the act. (*Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, 438.)

Mr. Justice Harlan, delivering the opinion of the court, said:

Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under

its power to regulate commerce among the States, must have some real or substantial relation to or connection with the commerce regulated. (*Adair v. United States*, 208 U. S., 178.)

In the car distribution case this court held an order valid affecting the railroad company's fuel cars, foreign railway fuel cars, and private cars, some of which were used in intrastate as well as interstate business. This court, speaking through Mr. Justice White, now Chief Justice, said:

It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends in time of car shortage to compelling a just and equal distribution and the prevention of an unjust and discriminatory one.

The corporation as a carrier engaged in interstate commerce being then, as to its interstate commerce business, subject to the control exerted by the act to regulate commerce, and the instrumentalities employed for the purpose of such commerce being likewise so subject to control, we are brought to consider the remaining proposition, which is,

Second. That, even if power has been delegated to the Commission by the act to regulate commerce, the order whose continued enforcement was enjoined by the court be-

low was beyond the authority delegated by the statute. (*I. C. C. v. Illinois Central*, 215 U. S., 452, 474; *Baltimore & Ohio Railroad Co. v. U. S.*, *ex rel Pitcairne Coal Co.*, 215 U. S., 31.)

In the case involving the construction of the employees' act (hours of service) the court, speaking through Mr. Justice Hughes, said:

But the argument undoubtedly involves the consideration that the interstate and intrastate operations of interstate carriers are so interwoven that it is utterly impracticable for them to divide their employees in such manner that the duties of those who are engaged in connection with interstate commerce shall be confined to that commerce exclusively. And thus many employees who have to do with the movement of trains in interstate transportation are, by virtue of practical necessity, also employed in intrastate transportation.

This consideration, however, lends no support to the contention that the statute is invalid. For there can not be denied to Congress the effective exercise of its constitutional authority.

* * * * *

If, then, it be assumed, as it must be, that in the furtherance of its purpose Congress can limit the hours of labor of employees engaged in interstate transportation, it follows that this power can not be defeated either by prolonging the period of service through other requirements of the carriers or by the

commingling of duties relating to interstate and intrastate operations.

* * * *

The commission, then, may call to its aid in the enforcement of the act "all powers granted" to it. And, although there might have been doubt as to the adequacy of the authority of the commission, under the law as it formerly stood, to require these reports, there can be none now in view of the amendment of section 20 of the act to regulate commerce by the act of June 18, 1910. (Chap. 309, 36 Stat., 556.)

* * * *

This clearly embraces the power which the commission here asserts, and it is certainly now entitled to promulgate an order requiring reports to be made. (*Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission*, 221, U. S., 612, 618, 619, 620, 621, 622.)

This court, considering the safety appliance acts of Congress in a case where two of five cars were used at the time in moving interstate traffic and the other three were moving intrastate traffic, speaking through Mr. Justice Van Devanter, said:

The act of March 2, 1903 (32 Stat., 943, c. 976) amended the earlier one and enlarged its scope by declaring, *inter alia*, that its provisions and requirements should "apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce."

* * * *

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way, Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate?

* * * * *

Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge: Both classes of traffic are at times carried in the same car, and when this is not the case the cars in which they are carried are frequently commingled in the same train and in the switching and other

movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both; and the situation is much the same with trainmen, switchmen, and like employees, for they usually, if not necessarily, have to do with both classes of traffic. Besides, the several trains on the same railroad are not independent in point of movement and safety, but are interdependent, for whatever brings delay or disaster to one, or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains. And so the absence of appropriate safety appliances from any part of any train is a menace not only to that train but to others.

These practical considerations make it plain, as we think, that the questions before stated must be answered in the affirmative. (*Southern Railway Co. v. United States*, 222 U. S., 20, 24, 26, 27.)

This court, speaking through Mr. Justice White, now the Chief Justice, said:

It can not be challenged that the great purpose of the act to regulate commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all and to destroy favoritism, these last being accomplished by requiring the publication of tariffs and by prohibiting secret departures from such tariffs, and forbidding rebates, preferences, and all other forms of

undue discrimination. To this extent and for these purposes the statute was remedial and is, therefore, entitled to receive that interpretation which reasonably accomplishes the great public purpose which it was enacted to subserve. (*N. Y., N. H. & H. Railroad Co. v. I. C. C.*, 200 U. S., 361, 391.)

When we consider that the primary objects of the act to regulate commerce are "to destroy favoritism," to prevent rebating and undue advantages of every kind which give to one shipper over the public highways an undue advantage over contemporaneous shippers, and that these unlawful acts by an interstate-commerce agent are discovered by an examination of carrier's accounts, it becomes apparent that there is "a real or substantial relation or connection between what is required by these" orders in respect to accounts and the object which the act to regulate commerce obviously is designed to attain. To make these accounts readily available for examination and comparison there must be a uniform classification and method of keeping accounts by all carriers. The reports and accounts of a single carrier if different in classification from the reports of other carriers would require a special investigation and analysis in each case to discover any unusual conditions. Reports would be valueless, also, for the purposes of comparison with former reports by the same carrier unless the classification was uniform. If a report shows an unusual condition regarding

any matter, especially as to the traffic—the relation of tonnage to revenue—a special examination would be made for the purpose of determining whether or not any one class of traffic—intrastate or port-to-port traffic, for instance—was bearing its proper proportion of the burden, and especially whether shippers of this class of traffic were receiving special advantages or rebates from the carrier in order to secure their interstate business. Constant vigilance on the part of the regulating body is absolutely necessary in order to prevent the large and powerful shippers from securing undue advantages over the weaker shippers.

Due consideration of these facts must lead to the conclusion that there is quite as substantial a relation between the act to regulate commerce and the classification of a carrier's accounts and reports as to all of its business, as there is between the act and the distribution of all cars, interstate and intrastate, at coal mines in order to prevent undue discrimination; or between the act and the enforcement of the employees' hours of service act against the negligence of an intrastate employee and requiring reports as to all employees; or the act and the placing of safety appliances upon intrastate cars in order to protect the interstate traffic.

These facts and the authorities cited we submit clearly sustain the first contention by the appellant that the provisions of section 20 have a real and substantial relation to the execution of the powers

and the attainment of the purposes of the act to regulate commerce, and therefore Congress has constitutional authority and the commission under section 20 of the act has power to call for statistical reports from, and classify the accounts of, these carriers by water.

II.

COMMON CARRIERS BY WATER, WHO HAVE VOLUNTARILY FILED WITH THE INTERSTATE COMMERCE COMMISSION JOINT TARIFFS UNDER WHICH THEY OPERATE JOINTLY WITH RAILROADS IN TRANSPORTING INTERSTATE PASSENGERS AND PROPERTY OVER THROUGH ROUTES PARTLY BY RAILROAD AND PARTLY BY WATER, ARE AGENTS OF INTERSTATE COMMERCE AND AS SUCH MAY BE LAWFULLY REQUIRED TO CLASSIFY THEIR ACCOUNTS AND MAKE STATISTICAL REPORTS OF THEIR ENTIRE BUSINESS AS COMMON CARRIERS.

It is claimed on behalf of the appellees that because carriers by water are not, *by name*, included within the act to regulate commerce and that it is only because they carry on transportation partly by railroad and partly by water that brings them under the act, therefore, section 20 does not apply to them. This appellant contends that as the appellees voluntarily entered into arrangements with railroads establishing through routes and joint rates partly by railroad and partly by water, not only is this traffic subject to Federal regulation but the carrier, as an agent of interstate commerce, is subject to all the provisions of the act that are ap-

plicable to agents. The manner in which the carrier is brought under the terms of the act is not material. It is the fact that a carrier is carrying interstate traffic subject to the act that renders the carrier amenable to all its provisions. Whether the carrier is brought under the act by name, personal designation, or by description or designation of the business (carriers partly by railroad and partly by water) makes no difference; they are carriers subject to the act if any part of the business they are doing is regulated and protected from unlawful acts by the Federal power.

The relation of a carrier to a particular traffic, or to instrumentalities which are under the regulating power of Congress, determines whether such a carrier is subject to the act.

In the case of the Oyster Police Steamers of Maryland (31 Fed. Rep., 763) it was held that three steam vessels belonging to the State of Maryland, not engaged in carrying freight or passengers but used to enforce the State fishery laws in the Chesapeake Bay, were liable to the penalties prescribed by sections 4499 and 4500 of the Revised Statutes of the United States for failing to have their hulls and boilers inspected by the United States inspectors under sections 4417 and 4418 of the Revised Statutes. The court held that the "supreme and exclusive control" of Congress of the navigable waters of the United States—

might be defeated, or rendered less effective for its objects, if there were to be recognized a class of vessels privileged to use them without being

subject to those provisions which Congress determines are required for the safety of all. I am therefore unable to assent to the contention that the fact that the vessels in the present case are not used in commerce, but solely for the police purposes of the fishery force, prevents Congress from having the constitutional power to legislate with regard to them. It is not their use, but the fact that they navigate the highways of commerce, which brings them within the constitutional grant of power, and within the language of section 4400 of the act of Congress. (See also the City of Salem, 37 Fed., 846.)

By an act of Congress it was declared that—

it shall not be lawful for the owner, master, or captain of any vessel propelled in whole or in part by steam to transport any merchandise or passengers upon the bays, lakes, rivers, or other navigable waters of the United States after the first of October of that year without first having obtained from the proper officer a license under existing laws; and providing a penalty, etc.

In March, 1868, the *Daniel Ball*, a vessel propelled by steam, was engaged in navigating Grand River, in the State of Michigan, between the cities of Grand Rapids and Grand Haven. It failed to take out the required license and libel was filed against it. The river was wholly within the State of Michigan and was not navigable for lake steamers of large draft nor did the smaller river steamers go upon the lake.

* * * It was contended that the *Daniel Ball* was engaged wholly in internal commerce within the State of Michigan and was not, therefore, required to be inspected or licensed under the act of Congress "even if it be conceded that Grand River is a navigable water of the United States." In discussing the question of the navigability of the river the court, speaking through Mr. Justice Field, said:

* * * And by its junction with the lake it forms a continued highway for commerce, both with other States and with foreign countries, and is thus brought under the direct control of Congress in the exercise of its commercial power.

That power authorizes all appropriate legislation for the protection or advancement of either interstate or foreign commerce, and for that purpose such legislation as will insure the convenient and safe navigation of all the navigable waters of the United States, whether that legislation consists in requiring the removal of obstructions to their use, in prescribing the form and size of the vessels employed upon them, or in subjecting the vessels to inspection and license in order to insure their proper construction and equipment.

Discussing the power over the agent of interstate commerce, the court said:

* * * So far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between

the States, and however limited that commerce may have been she was, so far as it went, subject to the legislation of Congress. * * * To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress.

In reply to the assertion that under this ruling "Congress may take the entire control of the commerce of the country," etc., the court said:

We answer that the present case relates to transportation on the navigable waters of the United States, and we are not called upon to express an opinion upon the power of Congress over interstate commerce when carried on by land transportation. And we answer, further, that we are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the States when that agency extends through two or more States, and when it is confined in its action entirely within the limits of a single State. If its authority does not extend to an agency in such commerce, when that agency is confined within the limits of a State, its entire authority over interstate commerce may be defeated. (77 U. S., 557-566.)

In an action in equity to enjoin an order of the Interstate Commerce Commission requiring appellants to cease and desist from the granting and giving undue preference and advantages to one E. H. Young, an exporter of cottonseed products at the port of Galveston, Tex., through failure to exact from him

wharfage charges for handling cottonseed cake over the wharves, docks, and piers owned by a terminal company, this court, speaking through Mr. Justice McKenna, said:

Two facts are prominent in the case: That the piers of the terminal company are facilities of import and export traffic at the port of Galveston and that the arrangement of the terminal company with Young has enabled him to largely and rapidly increase his business, until his exports of cottonseed products are more than twice those of all other competitors, that he derives therefrom 30 to 40 cents per ton over the ordinary buying and selling profit, and that some who were his competitors have ceased to export. A direct advantage to Young is manifest. A direct detriment to other exporters is equally manifest.

* * * Appellants make much of their title, and, assuming it to be absolute, assert the right to an unrestrained use of the property. * * * The act of the legislature declared that the property "should be developed for shipping and transportation purposes, and that the shipping facilities at the port of Galveston should be thereby improved and enlarged in order to better accommodate the commerce of the port and of the State." And wharfage charges, except so far as they should be covered by the freight rates, should be subject to regulation by the railroad commission of the State.

It is clear, therefore, that it was the purpose of the ordinance and of the act confirming it

to secure shipping facilities for the city, open to public use, and necessarily so, for the property was to be the terminal of a railroad and steamship system.

The wharves were owned by the terminal company organized to construct terminal facilities for the Southern Pacific Railroad and Steamship systems, and to accommodate the export and import traffic of Galveston. The properties were controlled by the Southern Pacific Co. through stock ownership. The terminal company did not file any tariffs, but was a link in this chain of transportation, and failure to make wharfage charges to Young was a device for giving him a special advantage. The court further said:

And surely a system so constituted and used as an instrument of interstate commerce may not escape regulation as such because one of its constituents is a wharfage company and its dominating power a holding company. As well said by the Interstate Commerce Commission, "a corporation such as this terminal company, which has 'competing lines,' should not be permitted to defeat the jurisdiction of this commission by showing that it is not in fact owned by any railroad company. * * *

The terminal company is part and parcel of the system engaged in the transportation of commerce, and to the extent that such commerce is interstate the commission has jurisdiction to supervise and control it within statutory limits. To hold otherwise would in effect permit carriers generally, through the organiza-

tion of separate corporations, to exempt all of their terminals from our regulating authority."

* * * *

The last contention advanced is that "the order of the commission transcends its jurisdiction, in that it regulates commerce purely State and intrastate, and also purely foreign commerce, neither of which is subject to its authority." * * *

It is manifest, as we have said, that to make the wharves manufacturing or concentrating points for one shipper and not for all is to give that shipper a preference. And being a preference, the traffic necessarily comes under the jurisdiction of the Interstate Commerce Commission. In other words, the manufacture or concentration on the wharves of the terminal company are but incidents, under the circumstances presented by the record, in the transshipment of the products in export trade, and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the commission said, the substance of things and make evasions of the act of Congress quite easy. (*Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S., 498.)

Mr. Justice White, now Chief Justice, speaking for the court in the Employers' Liability cases, said:

From the first section it is certain that the act extends to every individual or corporation who may engage in interstate commerce as a common carrier. Its all-embracing words leave no room for any other conclusion. * * * That is, the subjects stated all come within the

statute when the individual or corporation is a common carrier who engages in trade or commerce between the States, etc. From this it follows that *the statute deals with all the concerns of the individuals or corporations to which it relates if they engage as common carriers in trade or commerce between the States, etc., and does not confine itself to the interstate-commerce business which may be done by such persons.* (Employers' Liability cases, 207 U. S., 497.)

These cases recognize the power of Congress to legislate in reference to the agents of interstate commerce who are carrying on a transportation business which is subject to the act. It is not the terminology of the statute or the manner in which its agents are brought under the regulating power of Congress, but it is *the fact that they are carrying on transportation which is subject to the regulating power of Congress* and which is to be protected from favoritism by the commission, that renders them subject to all the general provisions of the act applicable to agents.

III.

THE ORDERS OF THE INTERSTATE COMMERCE COMMISSION ARE NOT ARBITRARY, BUT TEND TO ADVANCE THE GENERAL PURPOSES OF THE ACT, AND THE ORDERS CONFORM TO THE REQUIREMENTS OF SECTION 20.

Prof. Henry C. Adams, a distinguished economist and statistician, in a paper read before the annual convention of railway commissioners in 1893, said:

In order that the law against discrimination in rates may be self-enforced there must be a

uniformly imposed and uniformly administered railway system. The managements can not be allowed to adopt unusual methods of business. * * * Now, the easiest way, indeed, the only way, or at least the first step toward the way by which uniformity of management may be secured, is to establish uniformity in accounts, to take from the railway officials the right of adjusting their accounts in an arbitrary manner. Accounts, if they be honest, are true records of administration, and he who controls accounts can, in a large measure, control the policy of management. * * * And what is more important, they the [commissioners] would be in a position to secure evidence against a carrier guilty of discrimination more easily than at the present time. And more than this, uniformity in accounts and strict supervision over them provides a new way of testing the compliance of the carriers with the rules of the commissioners. Statistics properly used and adequately kept are the surest way of detecting any general departure from the established rules of management. * * * It seems, then, whether we consider the question of railway discrimination, of just and reasonable rates, or of stability in rates, that a bureau designated especially for investigation and for imposing upon the railways uniform methods of management is essential to the realization of the commission idea. (Fifth Annual Convention of Railway Commissioners, pp. 44, 48, and 49.)

These words of Mr. Adams show that, in his view, there is a very substantial relation between the pur-

poses of the act to regulate commerce and the provisions of section 20. A comparison of the exhibits filed in this case will show that the classification of accounts and the subjects of the reports to be made by carriers conform to and correspond with the subjects or facts expressly specified in section 20, upon which Congress requires specific reports. The section upon this point reads:

Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the commission may require.

The action of the commission in requiring the accounts to be kept in accordance with this classifi-

cation is not arbitrary, but is controlled by, and is in furtherance of the expressed will of Congress.

Congress in adopting these regulations, and the commission in carrying them out, have exercised that legislative discretion which belongs to that branch of the Government; they have determined what means will best enable the legislative branch of the Government to perform the duty assigned to it of regulating and protecting interstate commerce.

Chief Justice Marshall, speaking for this court, said:

We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. (*McCulloch v. Maryland*, 4 Wheaton, 316, 421.)

In the Lottery case, Mr. Justice Harlan, speaking for this court, said:

They also show that the power to regulate commerce among the several States is vested in Congress as absolutely as it would be in a single

government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that such power is plenary, complete in itself, and may be exerted by Congress to its utmost extent, subject *only* to such limitations as the Constitution imposes upon the exercise of the powers granted by it; and that in determining the character of the regulations to be adopted Congress has a large discretion, which is not to be controlled by the courts simply because, in their opinion, such regulations may not be the best or most effective that could be employed. (Lottery case, 188 U. S., 321, 353.)

Other cases might be cited recognizing the exclusive discretion which the legislative branch of the Government exercises when adopting any means intended to accomplish the purposes in view in a legislative act.

There is nothing in the bookkeeping required that is unusual or casts any improper burden upon the carrier. It simply provides for a classification of the accounts in the books to correspond with the classification of the facts called for by section 20. It is just as economical and easy for the carrier to keep its accounts under this classification as it is under any other. By this uniform classification the commission can discover any unusual or abnormal condition in any branch of the business and the reports become of the highest value for the purposes of comparative study and further legislative action by Congress.

It is claimed by appellees that Congress has granted to the Commission legislative powers, in violation of the fundamental law. This question has been before this Court upon several occasions, and without quoting from the opinions the following cases are cited in support of the power of Congress to enact section 20 and the power of the Commission to prescribe the forms of the reports and the classification of accounts.

Butterfield v. Stranahan, 192 U. S., pp. 496, 497.

Union Bridge Co. v. United States, 204 U. S., p. 377.

Monongahela Bridge v. United States, 216 U. S., p. 177.

United States v. Grimaud et al., 220 U. S., p. 506.

It is also contended that the constitutional rights of the appellants are invaded by the publicity given its business. This contention is answered by the decision of this court in the Corporation Tax Law case. In its decision the court, speaking through Mr. Justice Day, said:

The contention is that the above section as originally framed and as now amended could have no legitimate connection with the collection of the tax, and in substance amounts to no more than an unlawful attempt to exhibit the private affairs of corporations to public or private inspection, without any substantial connection with or legitimate purpose to be subserved in the collection of the tax under the act now under consideration.

But we can not agree to this contention. The taxation being, as we have held, within the legitimate powers of Congress, it is for that body to determine what means are appropriate and adapted to the purposes of making the law effectual. In this connection the often-quoted declaration of Chief Justice Marshall in *McCulloch v. Maryland* (4 Wheat., 316, 421; 4 L. ed., 579, 605) is appropriate: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

Congress may have deemed the public inspection of such returns a means of more properly securing the fullness and accuracy thereof. In many of the States laws are to be found making tax returns public documents, and open to inspection.

We can not say that this feature of the law does violence to the constitutional protection of the fourth amendment, and this is equally true of the fifth amendment, protecting persons against compulsory self-incriminating testimony.

In *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, supra, the court said:

Fourth. There is a final objection that to compel the disclosure by these reports of violations of the law is contrary to the fourth and fifth amendments of the Constitution of the United States.

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The order of the commission is suitably specific and reasonable, and there is not the faintest semblance of an unreasonable search and seizure. The fourth amendment has no application.

This last paragraph may well be said of the orders now under consideration.

IV.

THE COMMERCE COURT ERRED IN HOLDING THAT "A RECAST OF THE FORMS OF REPORTS SHOULD BE MADE BY THE COMMISSION, ACTING IN CONFORMITY WITH THE VIEWS HEREIN EXPRESSED," THEREBY REQUIRING THAT THE REPORTS AND CLASSIFICATION OF ACCOUNTS SHOULD ONLY INCLUDE BUSINESS PARTLY BY RAILROAD AND PARTLY BY WATER.

The Commerce Court in its opinion said: "A recast of the forms of reports should be made by the commission acting in conformity with the views herein expressed. We think it advisable that the commission rather than the court should proceed to make the recast." The meaning and effect of this order is that the uniform bookkeeping required and the reports should include only the business transacted by these water carriers in connection with railroads and that their intrastate business and port-to-port interstate business should be excluded from the accounts. As stated, all of this business is transacted upon steamers carrying all classes and kinds of freight, and the accounts of all the business is kept in the general

books of the company; the business is transacted by the corporation as a unit. To make such a segregation as is required by the opinion and order of the Commerce Court is impossible.

While it is true that the *revenues* from intrastate business may be segregated, it is impossible, except upon an arbitrary basis, to so segregate the operating expenses. Every boat carries interstate and intrastate passengers and freight. The fuel for the engine, the employees operating the boat, handling the freight and maintaining the equipment are all performing services incident to both interstate and intrastate traffic. There is no possible way of determining how much of these expenses shall be charged to the one class or the other except by some arbitrary rule. As was said at a convention of railroad commissioners by the committee upon the assignment of expenses to freight and passenger traffic:

We may observe, first, that the rule referring to mixed trains appears, so far as we can learn, to rest upon nothing more definite or valuable than some one's conjecture, and the identity of the conjecturer seems to be unknown. That it is based upon any experience or upon any theory that finds a basis in the facts of the railway business of the country has never been made apparent.

The court should take a practical view of these claims that interstate subjects should be segregated from intrastate subjects, as was done in *Southern Pacific Railway Co. v. Interstate Commerce Commis-*

sion, *supra*. In that case Mr. Justice Van Devanter said:

Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge: Both classes of traffic are at times carried in the same car and when this is not the case the cars in which they are carried are frequently commingled in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both; and the situation is much the same with trainmen, switchmen, and like employees, for they usually, if not necessarily, have to do with both classes of traffic.

* * * * *

These practical considerations make it plain, as we think, that the question before stated must be answered in the affirmative.

In cases pending in this court, for the purpose of determining whether the intrastate rates prescribed by State commissions are so low as to create a burden upon interstate commerce, it became necessary to take the testimony of experts and arrive at some *arbitrary rule* by which the operating expenses, as to past transactions, are divided for the purposes of such an investigation. In these "State cases" division has been made under the direction of the courts. But it will be conceded at once that it is not within the province of a bookkeeper, entering current items of debit and credit in the carrier's books, to

determine the division of expenses. When a bookkeeper enters in the records of the company items of money invested in property and equipment, he can not say, so much of this is for interstate and so much for intrastate business. He has no rule by which to make a division. This is true in reference to nearly every item of expense that can be mentioned. Bookkeeping is for the purpose of showing revenues and expenses and giving an annual *balance sheet*, and it must include receipts and expenditures *from all sources*; therefore it must treat the whole business as a unit. If we should say to the carrier, you shall give us the operating expenses of interstate business only, the carrier would promptly reply, this is impossible; it can not be done except by some arbitrary basis of division, and there is no tribunal vested with authority to determine what division shall be made between these classes of business. If Congress undertook to determine it, that action would not be binding upon the States; if the States undertook to decide, it would not be binding upon Congress. The conclusion is inevitable, and requires no proof, that if reports are to be made regarding the financial conditions of a carrier the reports must cover all the receipts and expenditures from every source. It must treat the subject as a unit.

The States have not complained that these intrastate accounts are called for, nor has the Federal Government complained that the States call for statistics covering interstate business. There is no attempt to regulate the *intrastate* traffic; the purpose

is only to secure statistical information regarding the business of the carrier.

But admitting that Congress has power to call for reports which include the receipts and expenses from every source, can Congress enforce a uniform system of bookkeeping or classification of accounts and records which shall include all receipts and disbursements from every source?

Bookkeeping is the foundation upon which reports are based, and determines, in a degree, as stated by Mr. Adams, how the business management of the carrier is conducted. If the reports are to be uniform, and of value for comparative purposes, it is essential that the accounts and records kept by the carriers be uniform. It would be very difficult to make the uniform report called for, and for the commission to make the examinations of the accounts from time to time, without having these accounts and records constructed on the same framework as are the reports. If they differ in the distribution of receipts and disbursements—that is to say, if the receipts from different sources and the disbursements are entered in different accounts than those specified in the reports—it would necessarily involve a large amount of labor and great difficulty to segregate the accounts that should go to the general divisions and subdivisions called for by the reports and the twentieth section.

An examination of the exhibits filed will show a carefully worked out system, prepared by the best experts in the country, which, when properly used,

give at a glance the disposition which has been made of the revenues of the carrier.

This classification of accounts and records is the same as is applied to railroads in so far as the transactions of carriers by water are the same as carriers by land.

An examination of the exhibits will show how necessary it is to have a classification of accounts and records as a basis for uniform reports, for the purposes of investigation and to attain the main objects in view in the regulation of common carriers. These accounts are so constructed and systemized as to enable the examiners of the commission to discover at once what use has been made of the revenues of a company—whether more of its net operating revenues have been used in what may be termed “capital investment” than is warranted, whether there has been discrimination, and whether there have been improper uses made of its revenues.

As stated, the regulation of reports and accounts and the classification of accounts is not a primary object of regulation, but it is necessary and substantially related to the primary objects.

Attention is also called to a provision in the orders of the commission set forth in the exhibits to the petitions entitled “Classification of operating revenues” and “Classification of operating expenses.” At the bottom of page 6, after specifying how the accounts shall be kept and that the general divisions shall be subdivided into primary accounts, it states that the carrier “may make assignment of

the amount credited (or charged) to any such primary account *to operating divisions*, to its individual lines, *or to States.*" While the orders require that the items of revenue and the items of expenses shall be classified under the particular heads named, they give latitude to the carrier to divide the items in reference to the operating divisions of its line or to States. Thus, taking the items of revenue, the account could show the amount received from intrastate business in each particular State through which the line runs, and in addition its revenues from interstate business. Wherever any revenue or operating expense can be divided between interstate and intrastate business it can be so entered in these accounts if the carrier desires or the States require it. The commission in formulating these orders, therefore, has gone to the fullest extent possible to allow a separation of these accounts consistent with their unity and securing the information necessary to the administration of the law.

If these appellees can not be required to give full reports of their entire business, interstate and intrastate, then every railroad company in this country is exempt from the law. All carrying companies transport both classes of traffic, and if one carrier subject to the act is not required to make reports and keep its accounts in accordance with the requirements of section 20, because it transacts intrastate business, then all carriers may refuse to make such reports. The splendid system of public accounts concerning quasi public corporations which

the commission maintains, upon which the whole country depends for information, upon which Congress legislates and the Interstate Commerce Commission acts, must go down, for it will be of no value unless it is complete in every particular. When these accounts lose the integrity which comes as a result of completeness and unity, they will be of no value.

Respectfully submitted.

CHARLES W. NEEDHAM,

Solicitor for the Interstate

Commerce Commission.





FILED.
FEB 12 1912

JAMES H. MCKENNEY,
CLERK.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1911.

INTERSTATE COMMERCE COMMISSION
et al.,

Appellants,

vs.

GOODRICH TRANSIT COMPANY,
Appellee.

No. 879

INTERSTATE COMMERCE COMMISSION
et al.,

Appellants,

vs.

GOODRICH TRANSIT COMPANY,
Appellee.

No. 880

UNITED STATES et al.,
Appellants,

vs.

WHITE STAR LINE,
Appellee.

No. 881

UNITED STATES et al.,
Appellants,

vs.

WHITE STAR LINE,
Appellee.

No. 882

BRIEF AND ARGUMENT FOR APPELLEES

RALPH M. SHAW,

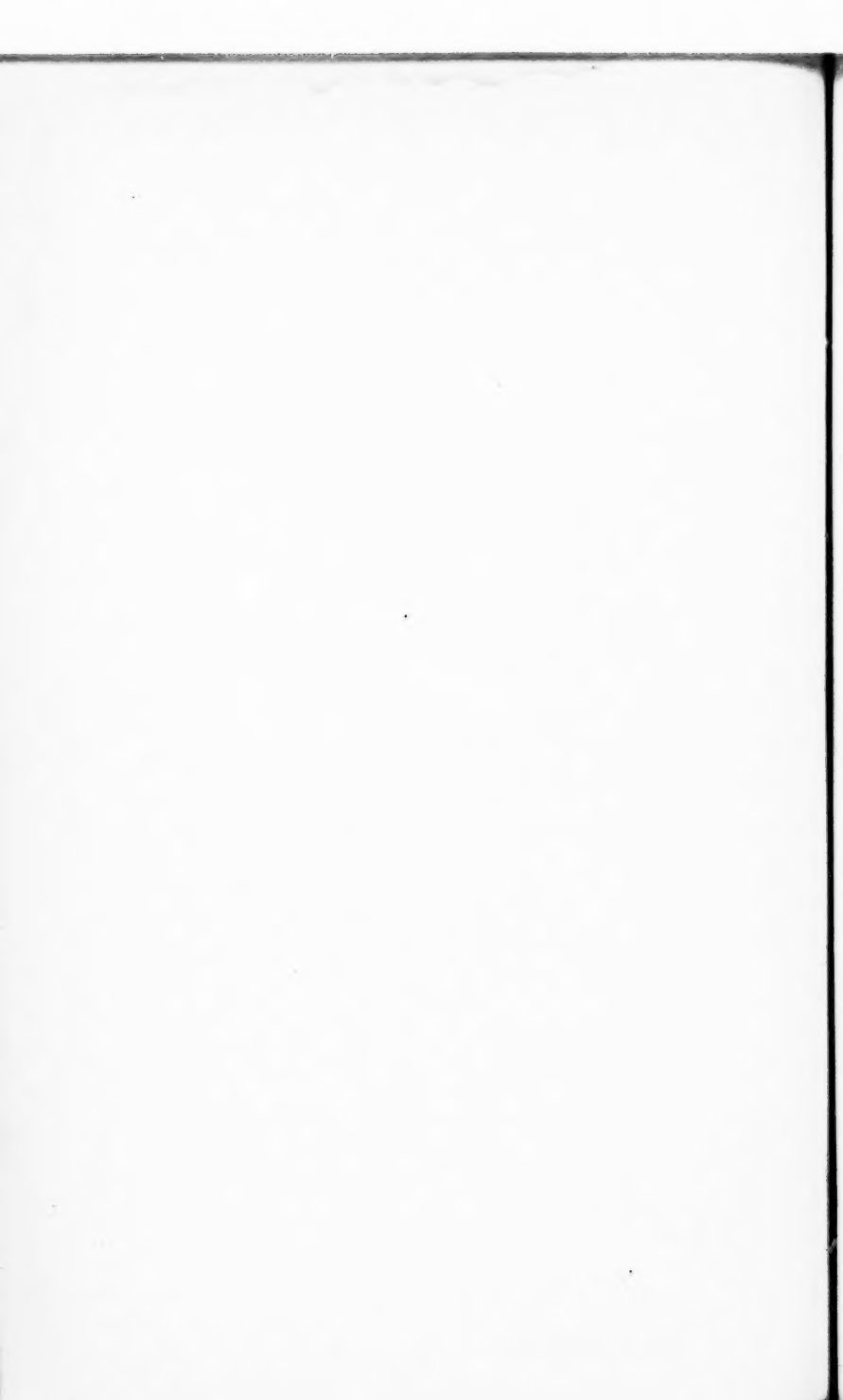
Solicitor for Appellees.

JOHN BARTON PAYNE,

SILAS H. STRAWN,

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Of Counsel.



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IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1911.

INTERSTATE COMMERCE COMMISSION et al., <i>Appellants,</i>	}	No. 879
<i>vs.</i> GOODRICH TRANSIT COMPANY, <i>Appellee.</i>		
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<i>vs.</i> GOODRICH TRANSIT COMPANY, <i>Appellee.</i>		
UNITED STATES et al., <i>Appellants,</i>	}	No. 881
<i>vs.</i> WHITE STAR LINE, <i>Appellee.</i>		
UNITED STATES et al., <i>Appellants,</i>	}	No. 882
<i>vs.</i> WHITE STAR LINE, <i>Appellee.</i>		

THE POWER TO REGULATE COMMERCE:

A PREFACE TO THE FORMAL BRIEF AND ARGUMENT
OF THE APPELLEES.

The power of Congress under the constitution to “regulate commerce among the several states” is *not* limited to “carriers of commerce between the several states.”

It is not limited to the regulation of “corpora-

tions'' engaged in commerce among the several states.

It is not limited in any respect whatsoever. It is as broad as interstate commerce itself.

It will be conceded that up to the present time Congress has not attempted, in the interstate commerce act, to regulate all interstate commerce. As an illustration it has not attempted to regulate the commerce or business of persons or firms engaged in interstate commerce.

It is, however, the contention of the government in the cases at bar that any person or corporation which engages in any interstate commerce which Congress has attempted to regulate, thereby subjects all of the remainder of its business to the regulation and inquisitorial power of Congress. It is contended that this is true, even though Congress *has not attempted to regulate the remaining part of such business, and even though Congress has no power to regulate the remaining portion of such business.*

It is argued that if a water carrier is engaged in any commerce subject to the act, all of its commerce and all of its internal affairs are subject *to the act* and to the inquisitions and regulations of the Commission.

It is argued by the government that if any person or corporation is engaged in any interstate commerce which Congress has attempted to regulate, the Interstate Commerce Commission may prescribe accounting methods with respect, not only

to that part of the interstate commerce which Congress *has not attempted to regulate*, but also with respect to intrastate business, which it is conceded that Congress *has no power to regulate*.

If this position is maintained, its far reaching effect is (in the language of this court in *Harriman v. Interstate Commerce Commission*, 211 U. S., 418):

“Unparalleled in its vague extent. * * * No such unlimited command over the liberty of all citizens ever was given, so far as we know, in constitutional times, to any commission or court.”

The Interstate Commerce Act as amended begins, as follows:

“The provisions of this Act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, etc. * * *) * * * from one state * * * to any other state, etc.”

There is no reason except the caprice of a congressional majority why the first section of the Act to regulate commerce should not be passed so as to read as follows:

“The provisions of this Act shall apply to every person, firm and corporation engaged in interstate commerce.”

If such an act be passed and the position of the Commission in the cases at bar should be maintained, then it would follow that any person, firm or corporation which should with respect to any portion of its business be engaged in interstate commerce, would thereby be subject with respect to all

of the rest of its business, regardless of what it might be, to the accounting methods prescribed by a federal commission, and the inquisitorial power of a federal commission as to the minutest details thereof.

We frankly confess that the great extent of the power is no reason why the court should decline to uphold it if it be *clearly* found in the *written* law. We submit, however, that if the interpretation insisted upon by the Commission be not clearly found in the written law, that its enormous scope, and its unparalleled extent require that it should be disaffirmed.

To affirm it, if doubtful, would be to establish a precedent for the encroachment by government upon the private rights of the citizen passing far beyond the tyranny of government which our forefathers emigrated to escape.

STATEMENT OF FACTS.

I.

CHRONOLOGY OF THE CASES AND THE PLEADINGS.

(1) On the 31st day of May, 1910, the Interstate Commerce Commission entered two orders; one, prescribing a method of bookkeeping with respect "to the operating revenue," and the other, with respect to the "operating disbursements" of the water carriers of the United States.

In and by said orders all of the water carriers, *which had become a party to as much as one joint rail and water route for one particular article moving in interstate commerce* were required to adopt the new system of bookkeeping prescribed in the orders on or before the first day of January, 1911.

(2) On the 11th day of June, 1910, the Interstate Commerce Commission entered another order, in and by which it directed all of such water carriers of the United States on or before the 31st day of the following October to make certain reports to it respecting their corporate organization, financial condition, and other internal affairs, etc. Prior to the date of the expiration of this order, the Commission extended it to and including the 31st day of December, 1910.

All three of the foregoing orders were entered by the Commission under the pretended authority of Section 20 of the Act to Regulate Commerce.

(3) Before the expiration of the year the Good-

rich Transit Company filed its two bills of complaint in the Circuit Court of the United States for the Northern District of Illinois, seeking an injunction to restrain the Interstate Commerce Commission from enforcing the three orders.

(4) In case No. 879, the validity of the order requiring special reports and known in the record as Order In re Special Report Series Circular No. 10, was assailed.

In case No. 880, the validity of the two orders with respect to the accounting methods were assailed.

(5) In each case the Government filed a certificate of Importance under the Expedition Act, and the cause came on for hearing for a restraining order before their Honors, Judge Grosseup, Judge Baker and Judge Seaman, Circuit Judges for the Seventh Circuit, and in each case temporary restraining orders were entered on the 31st day of December, 1910.

Later under the Act to Regulate Commerce, the cases were transferred to the United States Commerce Court.

In each case the United States was permitted to intervene and still later the complainants were given leave to file amended bills of complaint which was done.

(6) In the meanwhile the White Star Line, a corporation of the State of Michigan, had likewise filed its two original suits in the United States Commerce Court in which it also attacked the validity of the same orders questioned by the Goodrich Transit Company.

(7) In case No. 881 the White Star Line questioned the validity of the two orders in re "operating income and disbursements," and in case No. 882 it questioned the validity of the order known as "Special Report Series Circular No. 10."

In these two cases, under the Act to Regulate Commerce, as amended in 1910, the United States was made party defendant, and the Interstate Commerce Commission entered its appearance as a defendant, and filed motions to dismiss as provided in the closing paragraph of Section 1 of the Act of June 18, 1910.

(8) All four cases came on for argument before the Judges of the Commerce Court sitting *en banc*, and were argued together, the first two cases on the demurrer of the Interstate Commerce Commission to the bills of complaint, and the second two cases on the motion of the Interstate Commerce Commission to dismiss which under the act of 1910 is equivalent to a demurrer.

At this hearing the United States, which had filed an answer in each case waived its answers and asked leave to be heard upon the demurrers which was granted:

Record No. 879, page 54.

Record No. 880, pages 34-35.

Record No. 881, page 22.

Record No. 882, page 19.

Government's brief, pages 11 and 12.

(9) As the result of the final hearing, the demurrers and motions of the Interstate Commerce

Commission in each of the cases were overruled. The United States also joined with the Commission in electing to stand upon the demurrers, and the motions to dismiss. (Rec. in case 879, page 54.*)

II.

THE AVERMENTS OF THE PETITIONS, ALL OF WHICH (BEING WELL PLEADED) ARE ADMITTED BY THE DEMURRERS OR MOTIONS TO DISMISS.

(1) For purposes of convenience we will first consider the averments of the petitions in cases 880 and 881--the two cases involving the validity of the orders respecting operating, income and disbursements. The amended petition in No. 880 and the demurrer thereto established the following facts (Rec., 20):

The Goodrich Transit Company is a corporation organized under the laws of the State of Maine, having its principal operating office in the City of Chicago. *It derives its right to exist, to elect officers, establish its by-laws, make contracts, bring suits, collect debts and keep its books of account from the State of Maine and not from the United States.* It has been engaged since the year 1906 in the transportation of passengers and freight for hire on Lake Michigan, Lake Huron, and the rivers tributary thereto. It owns certain dock properties in the States of Illinois, Wisconsin and Michigan, and some ten or more steamers and one tug, and its business is divided into three classes:

*The final order in each case is substantially the same.

(a) It carries for hire, passengers and freight originating at ports in the States of Michigan, Wisconsin and Illinois, and destined to ports in each of the other states. This is known as its "*port to port interstate business.*"

(b) It carries for hire passengers and freight originating at and destined to points in the same state, and not passing out of said state en route. This business is known as its "*port to port intrastate business.*"

(c) It has also voluntarily agreed with some of the interstate railroad carriers of the United States to establish certain through routes over which passengers and freight are carried under joint tariffs. This is known as its "*joint rail and water business.*"

Eighty per cent. of its gross revenue is derived from its "*port to port*" interstate and intrastate business, and less than twenty per cent. of its gross earnings is derived from its joint rail and water business.

The company has no power of condemnation, and is subject to the fiercest competition. Any person, having sufficient funds to purchase a boat and place it in service can compete with it. It has no monopoly of docking privileges or terminal facilities, and any person can acquire such privileges upon paying a reasonable sum.

In June, 1910, the Interstate Commerce Commission, acting under the authority claimed by it to have been conferred upon it by Section 20 of the Act to Regulate Commerce,—entered two orders

known as the orders "In Re Operating Income and Disbursements." (Copies of these orders were attached as an exhibit to and made a part of the bill of complaint.) A copy of these orders, together with the inquiries referred to in the orders was served upon complainant, and it was notified by the Commission that it would be subject to the penalties prescribed by the Act to Regulate Commerce unless on or before January 1st, 1911, it adopted the book-keeping methods and conformed to the orders entered by the Commission;

The accounting methods prescribed by the Commission differ widely from those in use by the Goodrich Transit Company, and in order to comply with the requirements contained in said orders, it will be necessary for the Transit Company to open up a complete new set of books, and to change its existing method of bookkeeping, all of which will entail great expense and annoyance upon it.

The requirements made by the Commission make no distinction between the books which the complainant keeps and its methods of accounting for its income and expenses in connection with its *intrastate* "port to port" business, and its *interstate* "port to port" business, and its *joint rail and water* business";

The orders entered by the Commission also prohibit the water carriers from keeping any accounts, records or memorandum other than those prescribed by the Commission and designated in the orders.

The Commission claimed that because of the fact

that the complainant had voluntarily become a party to certain joint rail and water routes the Commission had the power to prescribe how the complainant shall keep all of its books of account; *and at the same time that it had power to prohibit the water carriers from keeping any accounts, records or memorandum as to any part of their business other than those prescribed by the Commission.*

The Act to Regulate Commerce as amended in June, 1906, conferred upon the Interstate Commerce Commission the same authority, if any, as it had upon the date of the entry of the orders complained of, but the Commission had never, prior to the entry of said orders, attempted to prescribe any accounting methods or forms with respect to the books of account of water carriers, of which the complainant is one, and the Commission had not since the amendment of June, 1906, up to the date of the orders, attempted to compel the complainant to keep its books of account by any method whatsoever.

Although the complainant and other water carriers for many years have voluntarily become parties to a limited number of joint rail and water routes over which passengers and property are transported in continuous carriage, and have filed voluntary tariffs or rather "concurrences" in tariffs filed by rail carriers therefor, with the Interstate Commerce Commission, the Commission has never before ruled or claimed that by filing such tariffs the complainant or other water carriers thereby subjected themselves to all of the provisions of the Act to Regulate Commerce, or to the provisions of Section 20 thereof.

The Interstate Commerce Commission on January 7th, 1909, in interpreting the Act to Regulate Commerce, and its powers thereunder made the following ruling to-wit:

“That carriers of interstate commerce by water are subject to the Act to Regulate Commerce only in respect to traffic transported under a common control, management, or arrangement with a rail carrier, and in respect to traffic not so transported they are exempt from its provisions.”

The Interstate Commerce Commission when it entered the orders complained of did not enter them, or either of them, because of any duty imposed upon it under or by virtue of any act of Congress other than the Act to Regulate Commerce, and there was no other act in existence conferring any authority upon or imposing any duty upon the Interstate Commerce Commission with respect to water carriers.

The accounting methods prescribed by the Commission are not reasonably adapted to the purpose of furnishing the Commission any information whatever with respect to the revenue or disbursements of the complainant relating to its joint rail and water business.

There is no reasonable relation between the said accounting methods and the revenue derived by the complainant from its joint rail and water business, or the disbursements made in connection therewith.

If the complainant should conform its methods to the requirements of the Commission the information which the Commission would thereby re-

ceive would not furnish it any data which would be more accurate than could be obtained by the Commission from the accounting methods at present in vogue, and adopted by the complainant.

If the complainant should conform to said requirements of the Commission, the Commission would not thereby be enabled to pass upon the justness, lawfulness, or fairness of any existing, proposed or possible rate classification, practice, or regulation of the complainant in connection with its joint rail and water business, or in connection with the existence or establishment of any through route, joint classification or division of rates upon its joint rail and water business.

If the complainant should conform to the requirements of the Commission, the Commission would not as the result thereof have any better or more accurate information than it now has and that can be obtained from the complainant's books as they are now kept upon any matter or thing concerning which a complaint may be filed under the Act to Regulate Commerce, or concerning which any question may arise under any of the provisions of the act or relating to the enforcement of any of the provisions of the act.

It is possible to establish a method of accounting by means of which the income and disbursements from the joint rail and water business of the complainant could be segregated.

It is not necessary for the complainant to keep its books as required by the Interstate Commerce Commission in order to furnish all of the informa-

tion which the complainant has or can get with respect to its joint rail and water business. The accounting methods prescribed by the orders, do not segregate in any manner the complainant's joint rail and water business from the complainant's "port to port" interstate business or intrastate business.

The bookkeeping methods required by the orders are not reasonably adapted to accomplish any lawful duty imposed upon the Interstate Commerce Commission.

The methods prescribed by the Commission are not such as the Board of Directors of the complainant, acting under their duties and obligations as such directors, deem prudent, advantageous and necessary. Said orders if enforced will disable the directors from performing their duties in this respect in connection with the intrastate and "port to port" business of the complainant as well as with respect to its joint rail and water business.

All of the foregoing facts were clearly and succinctly set up in apt language in the complaint.

With respect thereto, the complaint charged, that the entry of said orders was a legislative act and neither an administrative or judicial function, that Congress did not have the power to confer upon the Commission the power attempted to be exercised by it in the entry of the two orders. (pp. 27, Rec., case 880.)

The complaint also charged that the power to regulate interstate commerce did not include the power to regulate and prescribe methods by which the

books of a corporation organized under the laws of any state should be kept.

While denying that Congress or the Interstate Commerce Commission had any authority of any kind over the accounting methods of a corporation with respect to any of its income or disbursements, the complaint charged that in any event such jurisdiction, if any, as the Interstate Commerce Commission had over accounting methods, was limited solely to the accounting methods with respect to the income and disbursements in the matter of joint rail and water business covered by through tariffs.

The complaint also charged that under the Constitution the power was not conferred upon Congress to require the complainant to adopt the accounting methods prescribed by the orders of the Commission, and *that the orders of the Commission were void for the reasons set out on p. 29 of the record in case 880.*

Continuing the complaint averred that if Section 20 should be construed as conferring upon the Commission the right to enter the orders respecting the accounting methods, that then *said Section 20 was void for the several reasons:*

(a) That the Constitution did not confer upon the Congress the authority to regulate the accounting methods of the complainant;

(b) The Constitution did not confer upon the Congress the right to prescribe the accounting methods of the complainant with respect to its intrastate business;

(c) The Constitution did not confer upon the

Congress the right to delegate *the authority to the Interstate Commerce Commission contained in Section 20*;

(d) The Constitution did not confer upon Congress the power to delegate to the Commission the right to prescribe the accounting methods of the complainant.

(e) Most especially the power to prescribe its accounting methods with respect to its intrastate business;

(f) Because the requirements contained in the two orders are not a regulation of interstate commerce;

(g) Because said Section 20 if construed as afore-said would be a violation of the Fifth Amendment to the Constitution in that it would be a taking of the complainant's property without due process of law;

(h) That the attempt of the Interstate Commerce Commission to require the complainant to keep its books and accounts in accordance with its requirement was an unlawful interference with the business of the complainant;

(i) That said Section 20 was void because in said Section 20 it is made a crime for any common carrier to keep any accounts, records or memoranda other than those prescribed or approved by the Commission.

(j) That no distinction is made in said act between accounts, records and memoranda with respect to intrastate business, and accounts, records and memoranda relating to interstate business.

(k) That even if the right to prescribe the book-keeping could be construed as a regulation of interstate commerce, and not a regulation of the internal affairs of a corporation, that nevertheless Congress and the Commission were without power to prohibit the complainant from keeping such accounts, records, or memoranda as it saw fit with respect to its intrastate business, and were without power to prohibit the complainant from disposing of its records or memoranda with respect to its intrastate business.

Continuing the complaint set out the drastic penalties to which the complainant would be subjected for failure to conform to the provisions of the Act and the orders of the Commission, unless the orders were restrained, and thereupon the complaint prayed for both a temporary and perpetual injunction.

(2) In case 881, as has been said, the White Star Line assailed the same two orders of the Commission. Its petition established the following to be the facts:

The White Star Line is a corporation organized under the laws of the State of Michigan, and is engaged in the same general line of business, as the Transit Co. between the City of Toledo, in the State of Ohio, through Lake Erie, Detroit River, St. Clair River to Port Huron, in the State of Michigan, and touching some twenty points in the State of Michigan and in the Dominion of Canada.

It also transacts:

- (a) A "port to port" interstate business;
- (b) A "port to port" intrastate business; and
- (c) some joint rail and water business.

Its income from its joint rail and water business is not *more than one per cent. of its total revenue from all of its business.*

(d) In addition to the foregoing this Company under its *charter operates two amusement parks, one at Tashmoo, in the State of Michigan, and one at Sugar Island, in the State of Michigan.* In connection therewith it owns, operates and derives revenue from lunch stands, merry-go-rounds, bowling alleys, bath houses, souvenir stands, photograph galleries, boat liveries, and launch ferries, and collects also admission fees from people entering said amusement parks.

The White Star Line assailed the validity of the two orders in its petition for each, every and all of the reasons set out in the bill of complaint filed by the Goodrich Transit Company, *and in addition thereto it challenged the validity of the two orders because in the two orders the Interstate Commerce Commission had attempted to prescribe the same accounting methods with respect to the amusement park business of the White Star Line (which had nothing whatsoever to do with transportation), that it had attempted to prescribe with respect to its transportation business.*

In other words, the White Star Line challenged the validity of the orders, not only because they were not a regulation of interstate commerce and not only because they did not segregate the joint rail and water business from the "port to port" interstate business, and the "port to port" intrastate business, but also because they did not segregate

the amusement park business of the White Star Line which existed and was conducted wholly in the state of Michigan.

(3) *As to cases 879 and 882:*

In case 879, known as the case "*in Re Special Report, Series Circular No. 10,*" the same facts with respect to the nature of the business of the Goodrich Transit Company, and the previous rulings of the Commission are set out (Rec., 17, No. 881), as in the complaint in case 880. In addition thereto the order in the matter of Special Report Series Circular No. 10 is set out in detail. There is also attached to the bill of complainant a copy of all of the interrogatories and answers which were required by the Commission, and it (the complainant) was notified unless it answered all of the inquiries or interrogatories it would be subjected to the penalties provided for by Section 20 of the Act to Regulate Commerce.

No distinction in said inquiries whatever is made between the "port to port" intrastate business, the "port to port" interstate business, the joint rail and water business and the internal affairs of the water carriers. The Commission claimed that because of the fact that the Company had voluntarily become a party to certain joint rail and water routes that therefore it (the Commission) had jurisdiction to inquire into, and to demand reports of the water carriers with respect to all of their business regardless of the nature or the places between which it was transacted, or of the routes over which it was conducted and regardless of

whether the answers to the inquiries had any relation whatsoever to the regulation of commerce.

Although the Commission had substantially the same authority with respect to such reports in 1887 as it had under the acts of 1906 and 1910, it had never, from its organization in 1887 to the date of the entry of the order complained of, attempted to require any reports from water carriers, and never before had it ever required any report from the complainant.

Although joint rail and water routes have been established between certain water carriers and rail carriers for many years, never before the entry of the order of June, 1910, did the Commission rule or claim that by establishing such joint rail and water routes the water carriers subjected themselves to all of the provisions of the Act or to the regulation of Section 20, and the ruling of the Commission of January 7, 1909, *supra*, was again quoted.

The order entered by the Commission was not pronounced by the Commission for the purpose of exacting evidence embraced under any complaint filed for violations of the Act to Regulate Commerce, *or for the purpose of making any investigation that might have been made the object of a complaint under the Act, or in regard to any case or any matter or thing concerning which a complaint under the Act to Regulate Commerce is or was authorized to be made, or concerning which any question might arise under any of the provisions of said Act, or relating to the enforcement of any of the provisions of said Act.* If the inquiries contained in Spe-

cial Report Series Circular No. 10 could possibly be construed as containing inquiries concerning any case or as to any matter or thing concerning which any complaint is authorized to be made to or before the Commission, or concerning which any question might arise under any of the provisions of the Act, or relating to the enforcement of any of the provisions of the Act, *said inquiries are not reasonably adapted to such purpose, and there is no legitimate or necessary connection between the inquiries propounded and such purpose.*

There is no statute requiring such a report to be kept secret, and if made public it will be open to the inspection of the complainant's competitors, and will be greatly injurious to the complainant's business. It is impossible to answer a large number of the questions in the report without divulging to the public information with respect to the details of the complainant's business which was solely intrastate, and which was solely "port to port."

A large number of the *inquires in Special Report Series Circular No. 10 relate solely to the internal affairs of the complainant, and it is impossible to answer said questions or any or either of them without reporting to the Commission all of the details in connection with the internal management of complainant's business; and none of said questions have any reference or connection with any existing, proposed or possible rate, classification, practice or regulation of the complainant's business, or of the existence or establishment of any through route, joint classification or division of joint rates.*

There is no question propounded in the report which relates solely to the joint rail and water business of the complainant.

None of the inquiries propounded by the Interstate Commerce Commission are so framed as to furnish to the Interstate Commerce Commission any information whatsoever with respect to the joint rail and water business, or the extent of the operations of the joint rail and water business, or which if answered would furnish any information with respect to its joint rail and water business.

The information which might or could be obtained by the Commission from the answers to all of the inquiries, *is not reasonably adapted to the purposes for which it is alleged by the Commission said inquiries are made, and has no legitimate relation, either to any complaint which might be filed for any alleged violation of the Act, or any investigation that might be made the object of complaint, or to any matter or thing concerning which any complaint authorized by the Act might be made, or to any question which might arise as to any of the provisions of the Act, or relating to the enforcement of any of the provisions thereof.*

The bill charged that the order of the Commission was void for the reasons set out on p. 24, Rec. in No. 879, and continuing the bill charged that if Section 20 of the Act to Regulate Commerce should be construed as conferring upon the Commission the right to require the complainant to answer the questions propounded in Special Report Series Circular No. 10, that then Section 20 of the Act to Regulate Com-

merce was void, for the reasons set out on p. 25, Rec. No. 879.

In the prayer for relief the complainant asked that the Commission be temporarily and perpetually restrained from enforcing its order.

(4) In case 882 the White Star Line set up substantially the same facts with respect to its organization, and the business which it conducted as was contained in the petition in case 881.

In this case also the White Star Line showed again that it was the owner of the amusement parks in question, and that the interrogatories covered by Special Report Series Circular No. 10 required it to report to the Interstate Commerce Commission the entire details of the business conducted by it at its two amusement parks.

It, therefore, charged that the order was void for all of the reasons charged by the Goodrich Transit Company, *and in addition thereto for the reason that the Commission had no inquisitorial or visitorial power over the business conducted by it at its amusement parks.*

III.

OPINION OF UNITED STATES COMMERCE COURT AND ITS DECREE.

At the conclusion of its very lengthy opinion, the United States Commerce Court held that the Interstate Commerce Commission did not have and that Congress did not intend it to have any regulation over the water carriers, except with respect to what is known as the "joint rail and water business"; that

the orders of the Commission were very much more comprehensive than this, and that therefore they were void. (Rec., 879, page 53.)

The court then held that in its judgment the orders should be recast by the Commission and not by the court.

In its final decree the orders were enjoined and were referred to the Commission to proceed in accordance with the opinion of the court. (Rec., 879, page 54.)

IV.

ERRORS ASSIGNED.

As has been stated, the cases were heard upon the unchallenged truth of the facts well pleaded in the petitions of the complainants. Although the United States as intervenor in the two suits of the Goodrich Transit Company, and as the original defendant in the two suits of the White Star Line, had filed answers, *nevertheless it waived its rights to its answers, joined in the demurrers or motions to dismiss filed by the Interstate Commerce Commission in each case and was content to rest its case upon the unquestioned truth of each, every and all of the facts stated in the respective bills.*

(See final order in each case.)

No error is assigned by appellants in either or any of the cases because of the fact that the appellants were not allowed to plead or answer. On the contrary, broadly speaking, all of the errors assigned amount to this,—that admitting every fact stated in each bill of complaint or petition to be true, the complainants were not entitled to the relief prayed for.

BRIEF.

I.

THE ACT TO REGULATE COMMERCE, DOES NOT PROVIDE THAT A WATER CARRIER, BY FILING A JOINT RATE WITH RESPECT TO CERTAIN TRAFFIC WITH A RAIL CARRIER, SUBJECTS ITSELF, OR ALL OF ITS BUSINESS, TO ALL OF THE PROVISIONS OF THE ACT. CONGRESS DID NOT INTEND TO INCLUDE THE WATER CARRIERS WITHIN THE TERMS OF THE ACT.

IF THE APPELLEES ARE WRONG AS TO THIS (AND WE INSIST THEY ARE NOT), ONLY CERTAIN SPECIFICALLY DESIGNATED TRAFFIC OF THE WATER CARRIERS IS SUBJECT TO THE ACT.

THIS APPEARS FROM

- (1) THE HISTORY OF THE PASSAGE OF THE ACT OF 1887, INCLUDING THE CONGRESSIONAL DEBATES THEREON.
- (2) CONTEMPORANEOUS CONSTRUCTION BY THE COURTS.
- (3) CONTEMPORANEOUS INTERPRETATION BY THE COMMISSION ITSELF.
- (4) THE CONGRESSIONAL DEBATES PRIOR TO THE PASSAGE OF THE ACT OF 1906.
- (5) THE ACT OF 1910, WHICH PROHIBITS THE INTERPRETATION URGED BY THE COMMISSION.
- (6) THE INTERNAL EVIDENCE OF THE ACT.
- (7) A COMPARISON OF CERTAIN PROVISIONS OF THE ACT WITH SPECIFIC LEGISLATION IN RE WATER CARRIERS; AND

(8) THE RULES LAID DOWN BY THE COURTS FOR THE INTERPRETATION OF THE ACT TO REGULATE COMMERCE, PRECLUDE THE INTERPRETATION PLACED UPON IT BY THE COMMISSION IN THE CASE AT BAR.*

II.

ONE ENGAGED IN INTRASTATE BUSINESS, WHO ALSO ENGAGES IN INTERSTATE BUSINESS, DOES NOT, THEREBY, SUBJECT ALL HIS INTRASTATE BUSINESS TO THE REGULATING POWER OF CONGRESS.

Employers' Liability Cases, 207 U. S., 502.
B. & O. R. R. Co. v. I. C. C., 221 U. S., 612 (618).

Cin. N. O. & Tex. Pac. Railway v. Interstate Comm. Commission, 162 U. S., 184.

The case of The Daniel Ball, 77 Wall., 557.

Explained and distinguished.

III.

AN ACT OF CONGRESS, OR THE ORDER OF AN OFFICER OF THE FEDERAL GOVERNMENT, OR A SUBORDINATE BODY, CREATED BY AN ACT OF CONGRESS, OR A DECREE OF A FEDERAL COURT WHICH UNDER THE GUISE OR THE PRETENSE OF REGULATING INTERSTATE COMMERCE, IS SO BROAD IN ITS SCOPE AS TO IN FACT REGULATE OR INTERFERE WITH INTRASTATE COMMERCE, IS VOID.

UNDER SUCH CIRCUMSTANCES, ESPECIALLY WHEN THE ACT IS PENAL, THE COURT WILL NOT INTRODUCE WORDS OF LIMITATION AND THUS BY JUDICIAL INTERPRETATION ATTEMPT TO MAKE GOOD THAT WHICH IN ITS ESSENCE IS VOID.

Illinois Central v. McKendree, 203 U. S., 514 (529).

*Each of the foregoing subheads is elaborated at length in the brief and argument, and is supported by numerous references to public documents and judicial decisions.

Addyston Pipe & Steel Company v. U. S.,
175 U. S., 211 (247).

Employers' Liability Cases, 207 U. S., pages
492, 498, 499 and 502.

United States v. Reese, 92 U. S., 214 (221).

Trade-Mark Cases, 100 U. S., 82 (99).

United States v. Ju. Toy, 198 U. S., 253
(262-263).

IV.

SECTION 20 OF THE ACT TO REGULATE COMMERCE IS VOID BECAUSE IT IS AN UNLAWFUL DELEGATION OF LEGISLATIVE POWER:

- (1) THE LAW GIVES THE COMMISSION DISCRETION TO DETERMINE WHETHER IT WILL LEGISLATE OR NOT.
- (2) THE LAW ALSO CONFERS DISCRETIONARY POWER UPON THE COMMISSION TO DETERMINE WHAT (IF ANY) THE LEGISLATION SHALL BE.

Field v. Clark, 143 U. S., 645 (693).

Wayman v. Southard, 10 Wheat., 1 (43).

Harriman v. Interstate Commerce Commission, 211 U. S., 407 (418).

O'Neil v. American Fire Insurance Company (Pa.), 30 Atl., 943.

Anderson v. Manchester Fire Insurance Co.
(Minn.), 63 N. W., 241.

Dowling v. Lancashire Insurance Co.
(Wis.), 65 N. W., 758.

King v. Concordia Fire Insurance Co.
(Mich., 1906), 103 N. W., 616.

ON THIS POINT THE CASES AT BAR ARE NOT, FOR SEVERAL REASONS, CONTROLLED BY EITHER UNITED STATES V. GRIMAUD, 220 U. S., 506, OR ST. LOUIS & IRON MOUNTAIN R. R. CO. V. TAYLOR, 210 U. S., 281.

(1) A CONSPICUOUS REASON IS THAT IN THE CASES AT BAR CONGRESS DID NOT DETERMINE OR LEGISLATE THAT THERE SHOULD OR OUGHT TO BE ANY RULES OR REGULATIONS RESPECTING BOOKKEEPING METHODS OR ANY UNIFORMITY THEREIN. ON THE CONTRARY CONGRESS LEFT IT TO THE COMMISSION IN THEIR DISCRETION TO DETERMINE:

(a) WHETHER THERE SHOULD BE ANY LEGISLATION ON THE SUBJECT AT ALL; AND

(b) IF SO, TO ENACT SUCH LEGISLATION.

(2) IT WAS THUS A COMPLETE DIVESTITURE OR DELEGATION OF LEGISLATIVE POWER.

V.

WHETHER OR NOT A POWER CLAIMED BUT NOT GRANTED IS A NECESSARY INCIDENT TO THE POWER GRANTED IS (WHERE THE FACTS ARE NOT CONCEDED) TO BE DETERMINED BY THE COURT.

IF UNDER THE PRETENSE OF EXERCISING A POWER GRANTED CONGRESS OR A SUBORDINATE BODY GOES BEYOND THAT WHICH IS NECESSARY THEN SUCH ACTION ON THE PART OF CONGRESS OR ITS SUBORDINATE BODY IS VOID.

Interstate Commerce Commission v. Ill. Cent., 215 U. S., 452.

Adair v. United States, 208 U. S., 161.

C., R. I. & P. Ry. Co. v. Arkansas, 219 U. S., 453.

Employers' Liability Cases, 207 U. S., 463.

A. C. L. v. Riverside Mills, 219 U. S., 186.

I. C. C. v. Union Pacific Co., Oct. Term, 1911, No. 451.

VI.

UNDER OUR DUAL FORM OF GOVERNMENT THE FEDERAL GOVERNMENT IS SUPREME IN THE FIELD OF INTERSTATE COMMERCE AND THE STATE GOVERNMENTS ARE SUPREME IN THE FIELD OF INTRA-STATE COMMERCE.

McCulloch v. Maryland, 4 Wheat., 472.

Worcester v. Georgia, 6 Peters, 515.

Ableman v. Booth, 21 Howard, 506.

License Tax Cases, 5 Wall., 462.

Employers' Liability Cases, 207 U. S., 463 (498).

Pennsylvania v. Knight, 192 U. S., 28.

B. & O. R. R. Co. v. I. C. C., 221 U. S., 612, 617, 618, 621.

VII.

SECTION 20 OF THE ACT TO REGULATE COMMERCE AND THE ORDERS OF THE COMMISSION BOTH IN RE "SPECIAL ACCOUNTING METHODS," AND IN RE "SPECIAL REPORT SERIES CIRCULAR NO 10," ARE VOID:

- (1) THEY ARE NOT A REGULATION OF THE RATES ON WHICH INTERSTATE COMMERCE MOVES.
- (2) THEY ARE NOT A REGULATION OF THE ROAD BED OVER WHICH INTERSTATE COMMERCE MOVES.
- (3) THEY ARE NOT A REGULATION OF THE VEHICLES IN WHICH INTERSTATE COMMERCE IS CARRIED.
- (4) THEY ARE NOT A REGULATION OF THE EMPLOYES ENGAGED IN HANDLING INTERSTATE COMMERCE.
- (5) THEY ARE NOT A REGULATION OF INTERSTATE COMMERCE ITSELF. ON THE CONTRARY THEY ARE AN IN-

INTERFERENCE WITH THE INTERNAL AFFAIRS OF THE APPELLEES.

- (6) THEY PROHIBIT THE APPELLEES FROM KEEPING FOR THEIR CORPORATE PURPOSES SUCH BOOKS AS IN THEIR OWN JUDGMENT THE CORPORATE NECESSITIES MAY REQUIRE.
- (7) THEY PROHIBIT A COMMON CARRIER ENGAGED AS TO ANY PART OF ITS BUSINESS IN INTERSTATE COMMERCE FROM KEEPING ANY BOOKS OR MEMORANDA NOT PRESCRIBED BY THE COMMISSION WITH RESPECT TO ANY BUSINESS WHICH IS NOT UNDER THE ACT TO REGULATE INTERSTATE COMMERCE.

Authorities, *supra*, VI.

VIII.

IN THE CASES AT BAR WE ARE NOT MET WITH ANY TROUBLESOME QUESTIONS INVOLVING THE NECESSITY OF REGULATING INTRASTATE COMMERCE IN ORDER TO REGULATE INTERSTATE COMMERCE.

- (1) WHILE THE APPELLEES DENY THAT CONGRESS INTENDED TO SUBJECT ANY OF THE WATER CARRIERS TO ANY REGULATION, NEVERTHELESS (ASSUMING FOR THE PURPOSES OF THIS POINT THAT THEY ARE WRONG IN THIS CONTENTION), EACH OF THE FOUR BILLS OF COMPLAINT STATES IN APT LANGUAGE THAT IT IS NOT NECESSARY FOR THE COMMISSION TO ESTABLISH THE ASSAILED ACCOUNTING METHODS OR TO MAKE THE ASSAILED INQUIRIES RESPECTING THE INTRASTATE BUSINESS, AND THE INTERNAL AFFAIRS OF THE APPELLEES IN ORDER TO PROPERLY REGULATE OR INVESTIGATE THEIR INTERSTATE BUSINESS.

- (2) EACH OF THE BILLS STATES IN APT LANGUAGE THAT THERE IS NO NECESSARY OR LEGITIMATE OR REASONABLE RELATION BETWEEN MANY OF THE RULES AND REGULATIONS AND MANY OF THE INQUIRIES MADE AFFECTING AND RESPECTING INTERSTATE BUSINESS, AND THE APPROPRIATE REGULATION OR INVESTIGATION OF THE INTERSTATE BUSINESS.
- (3) THESE FACTS ARE ADMITTED BY THE DEMURRERS.

IX.

CONGRESS HAS NO POWER TO MAKE A GENERAL INQUISITORIAL EXCURSION OR EXAMINATION INTO THE INTERNAL AFFAIRS OF A CORPORATION ORGANIZED UNDER THE LAWS OF ONE OF THE STATES.

Angell & Ames on Corporations, Sec. 687.

Guthrie v. Harkness, 199 U. S., 148.

Sinking Fund Case, 99 U. S., 720.

Northern Securities Company v. U. S., 193 U. S., 348.

Hale v. Henkel, 201 U. S., 75.

In re Pacific Railway Investigation, 32 Fed., 241.

Interstate Commerce Commission v. Brimson, 154 U. S., 447.

Wilson v. U. S., 221 U. S., 361 (384).

X.

CONGRESS MAY NOT INQUIRE INTO THE INTERNAL
AFFAIRS OF A STATE CORPORATION EXCEPT FOR
CERTAIN SPECIFIC PURPOSES.

Kilbourne v. Thompson, 103 U. S., 168.

In re Chapman, 166 U. S., 661.

*Interstate Commerce Commission v. Brim-
son*, 154 U. S., 478.

*Harriman v. Interstate Commerce Commis-
sion*, 211 U. S., 407 (417).

Wilson v. United States, 221 U. S., 361
(384).

THE GOVERNMENT'S BRIEF.

As has been stated, and as the record shows, these cases were argued in the court below on demurrers to the two bills of complaint of the Goodrich Transit Company, and upon motions to dismiss provided by Section 1 of the Act of 1910 to the two petitions of the White Star Line.

Although as the record shows the United States (as distinguished from the Interstate Commerce Commission) had prior to the argument in the court below filed answers to the bills of complaint and to the petitions, nevertheless upon the argument of the demurrers, it appeared, waived its answers and asked leave to join in the demurrers.

The record in the four cases is as follows:

"On April 18th said causes came on for further hearing upon the demurrers and the motions to dismiss the petitions, and the arguments of counsel were continued; Mr. Ralph M. Shaw appearing in behalf of the petitioners and Hon. James A. Fowler in behalf of the United States."

Record No. 879, page 27.

Record No. 880, page 33.

Record No. 881, page 21.

Record No. 882, page 17.

On January 19th the record is as follows:

"Said causes came on for further hearing on the demurrers and the motions to dismiss the petitions, and the arguments of counsel were concluded; Hon. James A. Fowler appearing in behalf of the United States and Mr. Ralph M.

Shaw appearing in behalf of the petitioners. Thereupon the causes were taken under advisement by the court."

Record No. 879, page 28.

Record No. 880, pages 33 and 34.

Record No. 881, page 21.

Record No. 882, page 18.

The final decree in each case reads as follows:

"These causes came on to be heard on the 17th, 18th and 19th days of April, A. D. 1911, on the demurrer of the Interstate Commerce Commission, filed on the 30th day of December, A. D. 1910, in cases Nos. 21 and 22, and on motion to dismiss of the Interstate Commerce Commission filed on the 21st day of March, A. D. 1911, in cases Nos. 23 and 24, and were argued by counsel, Mr. Ralph M. Shaw appearing for the petitioners, Mr. Charles W. Needham for the Interstate Commerce Commission, and Mr. J. A. Fowler for the United States, *he having applied to the court for permission to participate in the argument, as the questions presented on the said demurrers and motions might be determinative of the cases, and said permission having been granted.*

It is therefore ordered, adjudged, and decreed that the said demurrers be, and the same are hereby overruled, and the said motions to dismiss be, and the same are hereby denied; and it further appearing to the court *and it is admitted by counsel for the United States* that under the holding of the court the answers of the United States tender no material issue of fact, and as the Interstate Commerce Commission elects to stand upon the demurrers and motions filed by it, and inasmuch as the adjudication is conclusive of all questions presented, this decree is, therefore, made final, and the prayers

of the petitioners for orders of injunction as prayed for in petition are granted. * * *

It is further ordered, adjudged and decreed that the matter be, and the same is hereby referred to the Interstate Commerce Commission to proceed with according to right and justice."

Record No. 879, page 53, 54.

Record No. 880, page 34.

Record No. 881, page 22.

Record No. 882, page 19.

It thus conclusively appears that these cases were heard in the court below on demurrer to the respective bills of complaint and petition. The defendants did not ask to plead over. They elected to stand on the demurrers.

It, therefore, follows that the consideration of the answer of the defendant, the United States, has no place on this hearing.

Nevertheless the Government in its brief filed here has attempted to argue these cases as if they were heard on bill and answer and not on demurrer.

Because of these facts we propose to ignore the major portion of the Government's brief, and to argue this case in this court upon the record as it was made in the court below, to-wit, upon the theory that this case will be heard by this court, and will be decided upon the demurrers to the petitioners' respective bills of complaint and petitions.

ARGUMENT.

I.

THE ACT TO REGULATE COMMERCE, DOES NOT PROVIDE THAT A WATER CARRIER, BY FILING A JOINT RATE WITH RESPECT TO CERTAIN TRAFFIC WITH A RAIL CARRIER, SUBJECTS ITSELF, OR ALL OF ITS BUSINESS, TO ALL OF THE PROVISIONS OF THE ACT TO REGULATE COMMERCE.

IN ANY EVENT, CONGRESS DID NOT INTEND TO INCLUDE WITHIN THE TERMS OF THE ACT, THE WATER CARRIERS EXCEPT WITH RESPECT TO CERTAIN SPECIFICALLY DESIGNATED TRAFFIC.

THIS APPEARS FROM

(1) THE HISTORY OF THE PASSAGE OF THE ACT OF 1887, INCLUDING THE CONGRESSIONAL DEBATES THEREON:

(a) *As to the Senate:*

The first resolution appearing upon the records of the Congress of the United States with respect to the regulation of interstate commerce, was introduced on March 17, 1885, by Senator Cullom. The Committee which was appointed under the resolution did not make its report until January, 1886. Reference to the committee proceedings shows that among the various questions considered by it was question 14, reading as follows:

“In making provisions for securing cheap transportation, is it or is it not important that the Government should develop and maintain a system of water routes?”

In considering this question, the inquiry developed along two lines:

1. The benefit to be derived from *unobstructed* and *free* water transportation, its development and maintenance.

2. Whether or not it was desirable to regulate it?

On January 18, 1886, the committee having had these questions under consideration, made the following report:

“* * * The evidence before the Committee accords with the experience of all nations in recognizing the water routes as the most effective cheapeners and regulators of railway charges. Their influence is not confined within the limits of the territory immediately accessible to water communication, but extends and controls railroad rates at such remote and interior points as have competing lines reaching means of transport by water. Competition between railroads sooner or later leads to combination or consolidation, but neither can prevail to secure unreasonable rates in the face of direct competition with free natural or artificial water routes.

The conclusion of the Committee is, therefore, that natural or artificial channels of communication by water, when favorably located, adequately improved and properly maintained, afford the cheapest method of long-distance transportation now known, and that they must continue to exercise in the future, as they have invariably exercised in the past, an absolutely controlling and beneficially regulating influence upon the charges made upon any and all other means of transit. (Page 170.)

The cheapest mode of transportation known is by water. The railroads have accomplished wonders, but no railroad can successfully compete with a free and unobstructed water route,

so far as the cost of carriage is concerned. Therefore, to secure the blessings of cheap transportation and to hold our place among the nations of the earth, we must develop our natural waterways to their fullest capacity and give the benefits of lake, river and canal communication to the people of all the states as far as practicable." (Page 170.)

Senator Cullom in making the report of the Committee to the senate, used the following language :

"The *general theory of the measure* is that as unjust discrimination in its various forms is recognized as the chief of all evils growing out of the existing methods of *railroad management* it is the duty of Congress to strike at that evil before all things else. The bill has accordingly been drawn with that end in view. The first section defines and prescribes the scope and application of the bill.

* * * * *

The bill is *not intended to affect* the stage coach, the street railway, the telegraph lines, the canal boat or the *vessels employed in the inland or coasting trade, even though they may engage in Interstate Commerce, as it would be it if were made to apply to all common carriers engaged in Interstate Commerce, because it is not deemed necessary or practicable to cover such a multitude of subjects. It is aimed at the regulation of the railroad corporation."*

Painter's Debates on Interstate Commerce,
Vol. 1, pages 3, 4 and 5.

The bill having been introduced was read twice and recommitted and on April 14th, the argument in the Senate was opened and continued until May 12th, when the bill, with the amendments was passed.

During the course of the debate, Senator Cullom said:

"The senator knows that any system of regulating through rates that leaves *one railroad* in a position where it can *take advantage of another* in this country is unjust. The *purpose of this provision* in relation to water transportation, is to so frame the section as that all American *railroads*, as well those that run outside into Canada, shall have to come up to the provisions of the bill to some extent. *There is no provision in this bill that at all interferes with water transportation* unless it is operated under some arrangement with a railroad company or common carrier by rail by which *it can take advantage of any other railroad* that has no water connection at all."

Painter's Debates, Vol. 1, p. 237.

The first section of the act as passed in 1887 was identically the same, so far as it relates to the matter in controversy in this litigation, as it was when the bill was first introduced by Senator Cullom into the Senate, with the exception that in the first section the word "wholly" was inserted before the words "by railroad" and the words "under a common control, management or arrangement" were inserted after the words "when both are used."

It is a matter of common knowledge that the only subject which the Senate decided deserved regulation was the railroads. During the course of the debate, Senator Spooner said:

"The conditions of *water transportation*, as to cost, etc., are *essentially different* to that by rail. The river and the lake are natural highways, free to all; they are highways furnished ready-made, free of cost, for the use and

benefit of all. No cost of maintenance and repair rests upon anyone as a condition of such use. If the river needs improvement, or the harbor on the lake, the necessary expenditure is made by the general public."

Painter's Debates, Vol. 1, page 143 (May 5, 1886).

Senator Brown, however, was not content to let the matter rest, without calling specific attention to the fact that the water carriers were not being regulated. During the course of the debate he used the following language:

"Here is one of the largest branches of interstate commerce of any other, that of all the navigable *rivers* in the United States, where *we are making no attempt to regulate it*. We are leaving those lines to form such combination as they please, to form such pools as they please, to make such arrangements for mutual protection as they choose. They may drop out of the line when they please, and charge twice as much for a short haul as they do for a long haul; and yet we are wrangling as to how we shall regulate *railroads* and leaving all that business open.

I think before we conclude this debate, and before we take the final vote on the fourth section, I shall offer an amendment so as to include transportation by common carriers on rivers. If it is right as to railroads it is right as to rivers. *I do not go into the ocean or into the lakes*, but where there is a *river* and a steamboat running upon the river, I do not see why the same rule should not apply to that which applies to the road that is built alongside the river."

Painter's Debates, Vol. 1, pages 202, 203, 205. (May 6, 1886.)

No such amendment, however, was ever offered incorporating or attempting to incorporate the expressions of Senator Brown upon the subject. In closing the debate, Senator Cullom made this argument:

"I undertake to say that the purpose of the bill, at least whatever may be the strained construction which has been placed upon it or which may be placed upon it by the transportation companies of the country, has been to *facilitate commerce* and to protect the individual rights of the people as against the *great railroad corporations*."

Painter's Debates, Vol. 2, page 333.

(b) *As to the House:*

The subject relative to the regulation of Interstate Commerce, first came up before the House of Representatives in January, 1886, when a bill was introduced for that purpose.

On March 8, the House Committee reported an amended bill which was placed upon the calendar. Before it was passed, the Senate bill reached the House. In course of time, the House bill passed the house and the senate bill and the House bill went to the Conference Committee. On December 8, 1886, the Conference Committee report was submitted to the senate, and in January, 1887, both houses concurred in the report. The bill, as finally adopted, was the senate bill without change, so far as paragraph 1 was concerned, and it is notable that a careful investigation of the proceedings before the Committee of the House does not disclose that in the house any reference whatsoever was made to the

water carriers, and there is no evidence that any one in the House conceived or intended that the water carriers should be regulated in any way whatsoever.

CONCLUSION ON THIS POINT.

So far as the congressional debates throw any light upon the subject under consideration, it conclusively appears that it was not the intention of the Congress to subject the water carriers to the provisions of the act to regulate commerce, or to provide that when a water carrier became a party to a joint rate with a rail carrier, that it thereby became subject to the provisions of the act to regulate commerce.

(2) CONTEMPORANEOUS INTERPRETATION BY THE COURTS.

In 1896, some 10 years later, the Commission conceived the idea of compelling some of the coast water lines to file their tariffs under the provisions of Section 6 of the act to regulate commerce, and instituted a proceeding for that purpose in the United States Circuit Court in and for the Southern District of New York, entitled *United States ex rel. Morrison v. New York and Texas Steamship Company*.

This case is not reported in the Federal Reporter, but a certified copy of the record can be furnished if desired.*

In this case the Commission charged in its com-

*This case is referred to by the Commission in its annual report for 1896, p. 49, and "In the Matter of Jurisdiction Over Water Carriers," 15 I. C. C., 214.

plaint that the New York and Texas Steamship Company was engaged in the transportation of passengers and property under a common control or arrangement for a continuous carriage or shipment, partly by rail and partly by water, of certain merchandise. The defendant answered denying in terms that it was engaged in the transportation of goods under a common arrangement, partly by railroad and partly by water, but it also attached as an exhibit to its answer an advertisement which had been promulgated and circulated by it, and which showed that it invited and had an arrangement for transportation from points on the Pennsylvania Railroad on through bills of lading over that railroad and over its line of steamships to points beyond, thus showing that there was an arrangement for through transportation. The depositions in the cases, which are on file in the records, showed the same thing. Notwithstanding these facts Judge Lacombe held that the Steamship Company was under no obligation to file tariffs for such freight with the Interstate Commerce Commission. This is the significant point in the case. In making his decision adversely to the contention of the Commission, Judge Lacombe used this language:

“In the ‘Social Circle Case’ all the carriers before the Supreme Court were railroads. The carrier in this case is an ocean steamship company, transporting passengers and freight between coastwise ports. Such a carrier is not within the intent or scope or language of the act to regulate commerce, unless, under some common control, management or arrangement, it had engaged with a railroad company for a con-

tinuous carriage or shipment betwixt points designated in the act.

In this case it is sufficient to say that I do not find here sufficient proof of continuity of shipment to warrant me in granting the relief prayed for. The application for a writ of mandamus is denied."

Thereupon the following colloquy took place:

"Mr. McFarlane: Will your Honor state your opinion as to the breaking of the bulk in transit?

The Court: In addition to what I have said, I will only add this: That an important factor in influencing my mind to the conclusion above expressed is the peculiar phraseology of the seventh section of the act,* but the conclusion reached is not solely because of that section, but upon the whole of the evidence as it stands.

Mr. McFarlane: Your Honor grants the motion of Mr. Cadwalader, then?

The Court: No; I refuse the application of the relator for the issuing of the writ of mandamus."

The scope of the act with respect to water carriers also came before the courts for consideration in *Ex parte Koehler*, 30 Fed. Rep., 867. In that case, the Oregon & California Railroad Company, in the hands of a receiver, was transporting goods over a line of road 400 miles long in the State of Oregon to the port of Portland, which goods were destined to San Francisco, in California, and were carried from Portland to San Francisco on the steamers of the Oregon Railway & Navigation Company. Rates were being charged for the rail carriage much lower than the rates for the freight originating in and

*The relation of section seven of the act to the subject now under consideration is discussed at length on p. 64 *post*.

destined to intermediate points in Oregon. The same was true with respect to the inbound freight originating at San Francisco, and carried by the boats of the Oregon Railway & Navigation Company to Portland and thence over the line of the railroad to destination. The line of the steamers and the line of the railroad were each subject to fierce competition and the line of the Oregon Railway & Navigation Company and the Oregon & California Railroad Company were each willing to cut rates for the through carriage, provided they could do so without violating the act to regulate commerce. The question was, whether the simultaneous agreement on the part of the rail carrier and of the water carrier brought the two carriers together with respect to the particular traffic, under the terms of the first provision of the act to regulate commerce. Judge Deady held that it did not, because the simultaneous agreement thus made, did not bring the rail line and the water carrier under a common control, management or arrangement *for a continuous carriage or shipment from one state or territory of the United States to another, etc.* Continuing, the court said (p. 870):

“Taking its several clauses together, my impression is, that no carrier is within its operation, unless he is engaged in interstate commerce by means of a railway or railway and water-craft under one ‘control, management, or arrangement,’ and that by such means or instrumentalities he does actually and continuously carry goods from within to without the state, or from without to within the same.”

So far as we are advised, these are the only two

eases involving the question as to when, if at all, and if so, to what extent, the water carrier becomes subject to the act to regulate commerce, which came before the courts after the passage of the Act of 1887 and prior to the passage of the Act of 1906. This, therefore, was the interpretation placed by courts upon the act when it was amended in 1906 and section 1 was left unchanged in this respect.

(3) CONTEMPORANEOUS INTERPRETATION BY THE COMMISSION ITSELF.

The scope of the act with respect to the water carriers, and the scope of the authority of the Commission over the water carriers were before the Commission for its consideration many times after the passage of the Act of 1887 and prior to the passage of the Act of 1906.

In its first annual report to Congress for the year 1887, the Commission said on page 43:

“Other matters, and particularly whether transportation by water shall be made subject to the act, are submitted to the wisdom of Congress without recommendation.”

And again on page 254, the Commission said, referring to the act:

“It does not embrace the carriers wholly by water, though they may also be engaged in the like commerce, and as such be rivals of the carriers which it undertakes to control. For the omission to include them many reasons may be suggested, but perhaps the most influential were that the evils of corporate management had not been so obvious in the case of carriers by water as in that of carriers by land, and

moreover the rates of transportation by water were so extremely low that they were seldom complained of as a grievance even when they were unequal and unjustly discriminating. In their competition with the carriers by land the carriers by water were sometimes at a disadvantage and compelled to accept lower rates, and this also had some influence in propitiating public favor, inasmuch as they appeared to operate as obstacles to monopoly and as checks upon extortion."

In the third annual report, the Commission said on page 72:

"The act carefully limits its operation to certain specified carriers, and the terms are such as are believed not to include the express companies regarded as common carriers. *Carriers exclusively by water are also omitted.*"

At page 433 of this report, it recommended *an extension of the law to make it apply to common carriers by water.*

In 1893 the Commission, on p. 59 of its annual report said:

"Congress did not see fit to include the carriers operating upon the lakes within the provision of the act to regulate commerce, *except in so far as they may engage in connection with railways in the transportation of interstate traffic under a common control, management or arrangement for a continuous carriage or shipment over a route, partly by railroad and partly by water.*"

The attention of Congress was called to this fact by the Commission in its third annual report, page 70, as follows:

"The Act applies to water transportation only when 'used under a common control, man-

agement, or arrangement for a continuous carriage or shipment' in connection with a railroad and as part of a line or route of which another part is a railroad, and leaves carriers engaged in transportation wholly by water independent of regulation.

An exemption of so considerable a part of the transportation from the operations of the law, is a serious hindrance to the regulations of that which the act includes.

** * * Carriers by water are not required to publish rates, and are under no restrictions as to rebates, discriminations, or as to charges proportioned to distances."*

Continuing the 1893 report, the Commission said, referring to water carriers (pp. 59-60):

*"The boats engaged in the traffic are of two classes, namely, those owned by the larger or 'regular' lake lines, usually operated in connection with a particular railway east of the lakes, and those known as 'tramp' or independent vessels. * * **

*It is the competition of these boats operating independently between the lake ports under fluctuating rates which the regular lines allege dominates the rate situation and prevents the publication by the latter of through rates in connection with the rail carriers. * * **

The Commission, therefore, respectfully renews the suggestion made in its sixth annual report and previously, that Congress consider whether it is not advisable to amend the first section of the act so as to bring this and similar traffic within its regulating authority."

In its Fifth Annual Report in 1891, the Commission made the following recommendation (see page 9):

"That transportation on the Great Lakes and the coasting and river traffic should be

brought under the control of the Interstate Commerce Commission, *so far at least as statistics are concerned*. The traffic on the Great Lakes in 1889, estimated in ton mileage, equaled 22 per cent. of the traffic of all the railways in the United States. The coast and river traffic is known to be of immense magnitude. It is impossible to secure complete statistics of transportation without calling upon water carriers for a statement of business done, and it is believed that, in some instances at least, water lines are used to assist railways in evading the requirements of the interstate commerce law.

These suggestions to the Commission are submitted for the consideration of Congress."

In 1894, on page 79 of its annual report to Congress, the Commission proposed the following definite amendment to the Act:

"That the provisions of this Act be made to apply to all transportation of interstate commerce over rail, *or rail and water lines*, and to all common carriers, corporations, companies, firms and persons in anywise engaged in such transportation, or owning lines, cars, yards or properties used in connection therewith."

In 1897 in its Eleventh Annual Report to Congress the Commission used this language (pages 40-41):

"The most superficial examination of the questions involved showed that as a matter of fact there was a broad difference between different kinds of competition as related to this question. The water carrier did not stand like the carrier by rail. The highway over which he operated cost him nothing. His vessels were comparatively inexpensive and could readily be transferred from place to place. The cost of carriage was ordinarily much less. *Above all, he was not subject to the provisions of this Act.*

He was compelled to publish no rate, to respect no schedule; he was free to go into the market and to take whatever transportation he could obtain at whatever figure he chose. Manifestly there was no similarity between competition with this carrier and competition with a railway subject to the provisions of the act to regulate commerce. * * * *There is no similarity between unrestrained water competition and competition regulated by the provisions of this Act."*

In 1899 in its Thirteenth Annual Report to Congress the Commission made this recommendation (page 63):

"In conclusion of his report the statistician repeats his previous recommendations to the effect that reports should be secured from express companies engaged in interstate traffic; that reports should be secured from corporations and companies owning rolling stock which is used in interstate traffic; and also special reports from corporations and companies owning depot property, stock yards, elevators, and the like, and that reports should be secured from carriers by water, so far as their business is interstate traffic."

In 1901 in its Fifteenth Annual Report the Commission made this recommendation (see page 59):

"In the conclusion of the report the statement is made that 'It seems unnecessary to repeat in this report the recommendations which have found expression in previous reports. They refer to annual reports from express companies engaged in interstate traffic, from carriers by water, so far as their business is interstate traffic, and from corporations and companies owning rolling stock used in interstate commerce. The jurisdiction of the Commission must be extended to these agencies of transportation,

so far at least as annual reports are concerned, before it is possible to render a comprehensive report upon interstate traffic."

In 1905 the Commission tried to get Congress to amend the first section of the Act by striking out the words "under a common control, management or arrangement."

(Annual report for 1905, on page 177.)

It thus appears from the Annual Reports of the Commission to Congress that beginning with the year 1887 the Commission had reported to Congress time and again that it did not have control over the water carriers. It had suggested time and again various amendments to the effect:

(a) that it should be given control over the water carriers;

(b) that it should be given control over them, at least, so far as statistics were concerned;

(c) It should be given power, at least, to demand reports from them.

The bills allege that the water carriers have voluntarily been for many years parties with rail carriers to a limited number of through routes, but that the Commission never before ruled or claimed that by reason thereof the water carriers subjected themselves to the jurisdiction of the Commission.

These averments of the bills are not only admitted by the demurrers, but the fact appears from the annual report of the Commission for the year 1893, *supra*, where the Commission said:

"The boats engaged in the traffic are of two classes, namely, those owned by the larger or

'regular' lake lines, usually operated in connection with a particular railway east, and those known as 'tramp' or independent vessels.

But—during all of these year the Commission never pretended to claim that by reason of the construction of these joint rail and water routes power had been conferred upon them to require reports from the water carriers joining in such routes either statistical or otherwise.

On the contrary, it constantly ruled that it did not have the power to make such orders and constantly urged in the annual reports to Congress that such additional power should be given.

Not only do these facts clearly appear from the annual reports of the Commission to Congress, but they also appear from the decisions by the Commission in the litigated cases which came before it.

In *Mattingly v. Penn. Co.*, 3 I. C. C. Rep., 592, the Commission referring to the Act to regulate commerce, said (p. 608):

"As has been seen, the principles that apply to interstate commerce, as annunciated by the court, constitute a comprehensive system, all the parts of which are embraced within the sphere of Federal regulation. These principles may properly guide in the interpretation of the provisions of the Act and indicate the extent of the regulation intended, so far as the power to regulate has been exercised. *Plainly the Act does not in all respects go to the extent of the power. For example, it does not apply to independent carriers by water.* The provisions adopted were perhaps regarded as sufficient until experience should show a necessity or propriety for further legislation."

In *Capehart v. R. R. Co.*, 4 I. C. C. Rep., 265, a steamboat company tried to require a railroad to make with it the same through arrangement that it made with a rival steamboat company. The Commission, however, decided that it had no such power, because that section referred only to such common carriers as are subject to the provisions of the Act. The Commission used this language, referring to Section 3 of the Act to Regulate Commerce:

"To construe this clause as embracing independent water lines would be to make such water lines subject in some important respects to the provisions of the statute, a result that would be manifestly *at variance with all the other provisions of the statute.*"

This then, was the condition of affairs when the amendment of the Act of 1906 came before the Congress:

(1) The courts had decided that a rail carrier and water carrier could simultaneously make an agreement by which freight originating in a State could be carried to the seaboard in the same state and thence over a water line to a foreign state, and that the water carrier was not subject to its provisions; and

(2) The Commission had decided its utter lack of control over the water carriers as such. It had called the attention of Congress to that fact.

(4) THE ACT OF 1906.

When the Act of 1906 came before the Congress, the entire question as to whether or not it should, in terms, be extended to include the water carriers to

a greater extent than they had previously been included, was before the Congress. Among others, Mr. Commissioner Clements (now Chairman of the Commission) appeared before the Senatorial Committee and this colloquy took place between him and Senator Cullom:

"Senator Cullom: And we would like to know, as a committee, as near as possible what the Commission who are dealing with the matter all the time really think as to what should be done from the different points of view where you consider them. So, if there is any other suggestion you have to make as to an amendment to the law or a change of the law, we would like to know exactly what it is.

Mr. Clements: Well, it has been said frequently that the water lines ought to be placed within the Interstate Commerce Commission's power. I refer to the coast water lines. *The railroads think that is a fair thing*; that if they are under the law these lines ought also to be under the law. I see no objection to that. I do not know that it is urged from the *public* standpoint, but it would seem to be a just thing."

"Senator Newlands: Is that urged as to the river lines also?

Mr. Clements: Well, I do not know about that. That has not been a matter which has been considered. The railroads have partly taken care of that themselves. They have run the boats out of the rivers, and, to use Mr. Lincoln's expression, who was on the stand the other day, they have met the water rates in the interior, so that the boats do not do very much." (Page 3237.)

Now it will be observed that Mr. Commissioner Clements publicly stated to the Senate that there was no demand for the extension of the regulation

over the water carriers from the public, but that it came solely from the railroads.

But—when the Hepburn Act was passed, notwithstanding both the previous construction by the courts and the interpretation and recommendations of the Commission, Section 1, remained as it was, without change so far as the water carriers were concerned, and the same was true with respect to Section 7. The only change of any kind or character affecting the water carriers was the insertion in Section 15 of the Act, a clause conferring upon the Commission the power to establish through routes and joint rates. The sentence as an entirety reads as follows:

“The Commission may also, after hearing on a complaint, establish through routes and joint rates * * * provided no reasonable or satisfactory through route exists * * * and this provision shall apply when one of the connecting carriers is a water line.”

This being the situation in interpreting the Act of 1887 as amended by the Act of 1906, the language of this court becomes exceedingly apposite. In fact it is controlling.

In *N. Y., New Haven & H. R. R. Co. v. Interstate Commerce Commission*, 200 U. S., 361, the court said (p. 401):

“Now, without at all intimating that as an original question we would concur in the view expressed in the case last cited that to have applied the act to regulate commerce, under proper rules and regulations for the segregation of the business of producing, selling and transporting as presented in the *Haddock* and *Coxe* cases, would have been confiscatory, and without re-

viewing the rulings made by the Interstate Commerce Commission in those cases and adhered to by that body during the many years which have followed those decisions, *we concede that the interpretation given by the Commission in those cases to the act to regulate commerce is now binding, and as restricted to the precise conditions which were passed on in the cases referred to, must be applied to all strictly identical cases in the future, at least until Congress has legislated on the subject.* We make this concession, because we think we are constrained to so do, in consequence of the familiar rule *that a construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, and has been impliedly sanctioned by the re-enactment of the statute without alteration in the particulars construed, when not plainly erroneous, must be treated as read into the statute."*

Considered in the light of the contemporaneous interpretation by the Commission for so many years; its utter failure for a quarter of a century to attempt to make or enforce its present interpretation; considered also in the light of its repeated urgent prayer for additional enabling legislation; considered also in the light of the fact that Congress refused to confer such additional power upon it, the decision in the foregoing case may be said to be conclusive of the cases at bar.

But—what shall be said of it in the light of a later interpretation of the Commission and of a still later report to the Congress after the passage of the Act of 1906, and prior to the passage of the Act of 1910.

* On January 8, 1909, the Commission made the fol-

lowing conference ruling which will be found in the "Conference Rulings," an official publication of the Commission printed as of December 28, 1909, on page 16:

"Carriers of interstate commerce by water are subject to the Act to Regulate Commerce only in respect of traffic transported under a common control, management or arrangement with a rail carrier, and in respect of traffic not so transported, they are exempt from its provisions."

In its annual report to Congress at the end of the year 1909 the Commission said on page 53:

"The statistical and accounting work of the Commission during the past year has advanced along the lines laid down by the Hepburn Act. It has entered on all the new lines of inquiry opened up by that act. So far as transportation agencies by water are concerned, it is not possible to proceed very far either in the development of an accounting system or in the compilation of statistics because of the uncertainty which exists with regard to jurisdiction. If it be the desire of Congress to obtain statistical data of water transportation as well as of transportation by rail, it will be necessary for the law to express itself clearly upon that point."

Now it will be observed that this last report was made only a few months prior to the passage of the amendment of 1910.

The Act of 1906, known as the Hepburn Bill, had not increased the power of the Commission in any of the particulars with respect to reports from or the accounting methods of the water carriers.

Within six months after this last mentioned report the Act of 1910 was passed. Instead of increas-

ing the power of the Commission and of settling in the Commission's favor the *alleged* "uncertainty which exists with regard to jurisdiction," such doubts, if any there were (which we deny), were settled adversely to the Commission's contention.

This brings us to a consideration of the passage of that Act.

(5) THE ACT OF 1910, WHICH PROHIBITS THE INTERPRETATION URGED BY THE COMMISSION.

Although all of the orders complained of in the cases at bar were entered a few weeks before the Act of 1910 became operative, nevertheless, one of the provisions of that Act renders it impossible to interpret the Act in question in accordance with the insistence of the Commission. When the Act of 1906 was passed, the Commission was given the authority to establish a through route

"provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line."

The phrase "and this provision shall apply when one of the connecting carriers is a water line," was known as "Senate Amendment No. 36," and was finally concurred in by the House. But in 1910, fearing that it had gone too far, Congress amended Section 15, by striking out the words,

"provided no reasonable or satisfactory through route exists,"

and inserted the following words,

"nor shall the Commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by

water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water."

What becomes of the argument of the Commission, to the effect, that if a carrier voluntarily files a concurrence in a joint rate, it becomes subject to the provisions of the Act?

This amendment absolutely precludes all possible inference that Congress intended to subject a water carrier to the regulation of the Act merely because it became a party to a joint rail and water route. If the interpretation placed upon the Act by the Commission in the entry of the orders in the cases at bar was correct, it was within the power of the Commission acting under the Act of 1910 to compel a water carrier to become a party to at least one joint through route and then *eo instanti* to insist that by so doing it had subjected itself to all of the provisions of the Act.

"*All of the provisions of the Act*" would have included a joint rate and through route even as between two water carriers, but Congress prohibited this interpretation. Congress said in 1910:

1. That the Commission should not establish through routes and joint rates between water carriers; and

2. Congress went much further. Congress provided that the water transportation of property under joint rail and water routes should come under the provisions—*not of the Act to Regulate Commerce—but under the provisions of such legislation as might be specifically aimed at the water carriers.*

It would be difficult to find language more conclusive upon the point which we are now considering.

Congress did not intend that the water carriers should subject themselves to the provisions of the Act by making a joint rate or through route. On the contrary, it did intend that even *as to the water portion of a through route*, the water carriers should be regulated, *not by the Act to Regulate Commerce, but solely by the laws, rules and regulations applicable to and aimed at transportation by water.*

(6) THE INTERNAL EVIDENCE OF THE ACT.

An examination of the structure of the Act itself, serves to confirm the conclusion that Congress did not grant the power, or intend to grant the power, which the Commission is attempting to exercise in these cases:

(a) If it had been intended to regulate the water carriers, generally, how easy it would have been to have said "the provisions of this Act shall apply to any common carriers or carriers engaged in the transportation of passengers or property wholly by railroad or water, or partly by railroad and partly by water, from one state or territory of the United States to another," etc.

Congress, however, did not use this language. The language excludes "all port to port interstate business" and the proviso at the end of Section 1 of the Act expressly excludes "all port to port intrastate business";

(b) Again—if Congress had intended when a common carrier by water voluntarily en-

tered into an arrangement for a continuous carriage or shipment of one commodity with a rail carrier from a point on the line of one to a point on the line of another in different states, that thereby such water carrier would be subject as to all of its port to port interstate business to the provisions of the Act, including the provisions of Section 20, how easy it would have been to have expressed such intention in apt language. A school boy could draft such a provision. One sentence would cover it. No such provision, however, was incorporated into the Act at any time;

(c) On the contrary, Congress hedged about such incidental control, if any, as it did confer upon the Commission over water carriers, with the most careful language.

The Act applies only to any common carrier or carriers partly by rail and partly by water "*when both are used under a common control, management or arrangement for a continuous carriage or shipment.*"

The word "when" so used, is equivalent to its synonyms,—"*in such cases as*" or "*in so far as.*"

One of the definitions given in Webster's dictionary is "*at what time.*"

This interpretation of the word "when" is made more significant by the use of the article "a" in two places in the sentence. The Act does not read, as it might well have read in order to justify the interpretation placed upon it by the Commission: "The provisions of this Act shall apply to any com-

mon carrier or carriers, partly by railroad and partly by water, engaged in the continuous transportation of property from one state or territory to another." On the contrary, the use of the word "when" and of the article "a," indicates that if Congress intended to subject such carriers to any regulation whatsoever, it was with respect only to a particular shipment, and in such cases only as there was a joint arrangement therefor.

No other explanation of the use of the word "when" and of the article "a" can be found which gives to those two words a definite concrete meaning. In other words, the Act in express language singles out those particular shipments which are carried under a joint arrangement and limits the control solely to them.

This is the exact distinction made by the Commission itself, when in a most carefully considered case, it decided that Congress did not intend to subject the water carriers to the jurisdiction of the Commission merely because as to some of their traffic they voluntarily entered into joint rail and water routes.

A selection from the language of this most interesting opinion, is as follows:

"The language of the provision in question indicates its meaning. The act applies to any common carrier or carriers engaged in transportation partly by rail and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment. The use of the word "when" is significant, and its natural meaning seems to be that a water carrier is subject to

the act 'in so far as' or 'to such extent as' it carries traffic under a common control, management, or arrangement with a railroad. It need hardly be stated that the act does not require publication of or adherence to rates upon purely intrastate traffic. With regard, then, to the history and purpose of the enactment, the language used and the rules of statutory construction which have been mentioned, it is difficult to see how serious doubt can arise that Congress did not intend to regulate the charges exacted upon the port-to-port business of water carriers; but, if further support of that position is necessary, it is amply found in the conditions under which port-to-port business is conducted. *Without mentioning in detail the fundamental differences between the conditions under which the two classes of traffic are carried, it is scarcely open to question that enforcement of the Commission's ruling might force water carriers to withdraw either from their port-to-port business or from their arrangements for through carriage in connection with railroads. If one water carrier by becoming a party to a joint rate with a railroad is thereby required to publish and adhere to its rates between ports, it could not hope to compete with a carrier which is not required to publish and maintain its rates, and the result would be that the actual operation of the law, instead of tending to promote and facilitate commerce, would tend rather to its injury by making unprofitable the instrumentalities provided for the carriage of that commerce. Under such a construction of the law there would exist the commercial anomaly of two water carriers between the same ports attempting to secure the transportation of competitive traffic, the one bound to observe and collect rates which it had published thirty days in advance, the other able to make any rate which would secure the traffic; one within the*

law and subject to severe penalties for its violation, the other without the law and governed only by its business interest. *That the Congress intended to produce such a condition—to create in a commercial sense a favored class of water carriers not subject to the act—and penalize other water carriers for their attempt to facilitate commerce by joining in through routes with rail carriers, seems unreasonable and might well be held unconstitutional, as depriving the latter class of carriers of the equal protection of the law.*”

In re the Matter of Jurisdiction Over Water Carriers, 15 I. C. C., 205.*

(d) Section 7 of the Act throws additional light upon this interpretation, for in that provision, we have a definition of what is meant by “continuous carriage from the place of shipment to the place of destination.”

It is clearly apparent that the Congress recognized there would necessarily be a break of bulk in the transfer from a rail carrier to a water carrier, and therefore, it provided in effect, that where there was a *bona fide* break of bulk, there was *not* a continuous carriage or shipment, but that if there was a fraudulent break of bulk for the *purpose of enabling a railroad to avoid* the other provisions of the Act, that there could not be an escape from the provisions of the Act.

This is in entire harmony with the intention

*The above mentioned case was decided 18 months before the passage of the Act of 1910. Congress was fully advised of it. But when the Act of 1910 was passed instead of amending the act so as to further extend its authority over the water carriers, Congress on the contrary so amended it as to preclude the interpretation now placed upon it by the Commission. This amendment is fully discussed on pages 58 to 60 *supra*.

avowed by Senator Cullom, when he said (Painter's Debates, Vol. I, p. 237):

"There is no provision in this bill that at all interferes with water transportation, unless it is operated under some arrangement with the railroad company or common carrier by rail by which it (railroad company) can take advantage of any other railroad that has no water connection at all."

(e) Section 6 of the Act throws additional light upon this subject. Under Section 6 of the Act, it is provided:

"* * * that every common carrier subject to the provisions of the Act shall file with the Commission * * * schedules showing all rates * * * between different points on its own route and points on the route of another carrier by railroad * * * or by water, when a through rate and joint rate have been established."

It has not been the interpretation or requirement of the Commission that a water carrier should publish a rate between a point on its line to a point upon the line of some other water carrier. The Act does not say that the water line shall publish the rates, but it says, "common carriers subject to the Act, when transporting traffic, partly by railroad and partly by water, when a through route has been established shall publish the rates. *This is what the rail carriers are doing now, but the water carriers are not publishing or filing with the Commission such tariffs.* They file mere concurrences.

(f) The entire terminology of the Act is opposed to the interpretation placed upon it by the Commission.

It is fair to assume that if Congress had intended that a water carrier should, by joining in one joint route, subject itself to all of the provisions of the Act, that it would have used the terminology which would have been apt as applied to such water carriers as came within its provision.

But we do not find any language in the Act referring to "vessels, wharves, docks, wharfage, piers or other facilities" ordinarily used when reference is made to carriers by water.

What we do find is the use of the words

"switches, spurs, tracks, yards, sidings, cars, grounds, depots,"

a terminology which is never used except when reference is being made to railroads and railroad facilities and could not by any stretch of the imagination be construed as applying to the facilities used by water carriers.

(g) Substantially every section in the Act begins with the phrase "every common carrier subject to the provision of this Act."

Under Section 1 it is provided:

"No common carrier subject to the provisions of this Act shall * * * directly or indirectly, issue or give any interstate free ticket or pass."

It is not claimed by the Government that any water carrier is subject to the provisions of Section 1.

Section 2 provides:

"That if any common carrier subject to the provisions of this Act, shall directly or indirectly * * * demand, collect or receive

* * * a greater or less compensation for any service rendered in the transportation of passengers or property * * * than it charges, demands, collects, or receives from any other person or persons * * * for doing a like and contemporaneous service."

It is not claimed by the Government that the water carriers are subject to the provisions of this section.

Section 3 of the Act provides:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference * * *."

It is not claimed by the Government that the water carriers are subject to this provision of the act.

Neither is it claimed by the Government that the water carriers are subject to the provisions of the second paragraph of Section 3.

Section 4 of the Act provides:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to violate the long and short haul rule."

It is not claimed by the Government that the water carriers are subject to this provision of the Act.

Section 5 provides:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement or combination with any other common carrier for pooling."

It is not claimed by the Government that the

water carriers are subject to this provision of the Act.

Section 6 begins:

“That every common carrier subject to the provisions of this Act shall print and keep open to public inspection schedules, etc.”

It is not claimed by the Government that the water carriers are subject to this provision of the Act. With respect to commerce carried over joint railroad water routes, the rail carries make publication of the tariffs.

Section 6 also provides:

“No change shall be made in the rates, fares and charges * * * except upon thirty days’ notice.”

It is not claimed by the Government that the water carriers are subject to this provision of the Act, except with respect to the joint rail and water business.

As has been said, substantially every section of the Act begins with the phrase

“Every common carrier subject to the provisions of this act,”

but—sufficient has been shown to emphasize the point now being made.

The Government not only does not claim that the water carriers are subject to the other provisions of the Act but it was conceded in the court below that not one of the provisions of the Act to Regulate Commerce applied to water carriers, except Section 20 thereof. *In other words, the water carriers, with respect to the port to port business, did not have to file tariffs.*

They are not guilty of discrimination.

They cannot be guilty of any undue preference under the terms of the Act.

The thousand and one provisions with respect to the regulations and duties of rail carriers, do not apply to them.

Counsel for the Commission could not answer the question propounded by several judges of the United States Commerce Court, and we submit that no satisfactory answer can be found to the question:

“If a water carrier by becoming a party to a joint rate and through route, does not subject itself to the other provisions of the Act to Regulate Commerce, what reason is there for saying that it subjects itself to the provisions of Section 20?”

No answer is possible.

(7) A COMPARISON OF CERTAIN PROVISIONS OF THE ACT WITH SPECIFIC LEGISLATION IN RE WATER CARRIERS.

From the inception of the Government down to the present time, the regulation of water transportation has been controlled by separate and distinct laws respecting it.

Richardson et al. v. Harmon, Receiver,
Oct. term, 1911; case No. 10; decided Nov.
20, 1911.

If the provisions of the Act to Regulate Commerce applied to every water carrier which voluntarily made an arrangement for a continuous shipment with a rail carrier, then much

of the legislation which has heretofore been passed by Congress for the protection and development of the water carriers is wholly destroyed. In any event, the provisions of the Act to Regulate Commerce are irreconcilable with the provisions of the Act to Regulate Water Carriers.

In 1893 Congress passed the Harter Act for the express purpose of regulating in its entirety water transportation. Section 3 of the Harter Act provides, as follows:

"If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel," etc.

Section 4282, of the Revised Statutes, provides as follows:

"No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner."

Section 4283 provides that the liability of the owner of a vessel for any embezzlement, loss or destruction of property, goods or merchandise, done, occasioned or incurred without the privity or knowledge of the owner,

"shall in no case exceed the amount or value of

the interest of such owner in such vessel, and her freight then pending."

Still further, Section 18 of the Act of June 26, 1884, provides:

"The individual liability of a shipowner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending."

But Section 20 of the Act to Regulate Commerce, provides that the originating carrier not only shall be liable to the lawful holder of a bill of lading for "any loss, damage or injury to such property caused by it," but said section also provides that the originating carrier shall be liable "for any loss, damage or injury to such property caused by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass."

In other words if the contention of the Interstate Commerce Commission is correct then Section 3 of the Harter Act is, by implication, repealed, because it subjects the water carriers to a liability never before imposed by law and expressly prohibited by the provisions of Section 3 of the Harter Act.

If Section 20, under which the Commission pretends to be acting in the cases at bar is applicable to water carriers with respect to their accounting methods and their special reports, then it is also applicable to the same carriers with respect to their liability for merchandise, and if so, it substantially

repeals the Harter Act which was passed to promote and regulate the water carriers.

It is respectfully submitted that if the Congress had intended to impose upon the water carriers with respect to all of their traffic a liability from which they were relieved by the provisions of the Harter Act, that Congress would have said so in such language as would not have needed either interpretation or strained construction.

(8) THE RULES LAID DOWN BY THE COURTS FOR THE INTERPRETATION OF THE ACT TO REGULATE COMMERCE, PRECLUDE THE INTERPRETATION PLACED UPON IT BY THE COMMISSION IN THE CASES AT BAR.

We have shown under this branch of our discussion:

(1) That the congressional debates did not justify the interpretation placed upon the Act by the Commission in the cases at bar;

(2) That the contemporaneous construction of the courts did not justify it;

(3) That prior interpretations of the Commission extending over and repeated for many years does not permit it;

(4) That the internal evidence does not permit it;

(5) That the facts in connection with the amendments of 1906 and 1910, do not permit it, and

(6) That a comparison of the Act with other acts passed for the purpose of regulating carriers by water, does not permit it.

That these various matters should be taken into

consideration by the courts in construing the particular act, has been expressly decided by this court in interpreting the Act to Regulate Commerce.

The court said in *Texas & Pac. Ry. v. Interstate Com. Com.*, 162 U. S., 197 (p. 218):

"Moreover, it must not be overlooked that this legislation is experimental. Even in construing the terms of a statute, courts must take notice of the history of legislation, and, out of different possible constructions, select and apply the one that best comports with the genius of our institutions and, therefore, most likely to have been the construction intended by the law-making power."

In *McKee v. U. S.*, 164 U. S., 287 (293), this court says:

"As was said by Mr. Chief Justice Taney: 'It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute, and the subject matter to which it relates; and to restrain its operation within narrower limits than it words import if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it.' *Brewer v. Blougher*, 14 Pet., 178, at 198; *Petri v. Commercial National Bank of Chicago*, 142 U. S., 644, 650."

In *Camden Iron Works v. U. S.*, 158 Fed. Rep., 561, a shipper had been indicted for receiving an alleged rebate from a water carrier with respect to the water portion of the transportation of a consignment of freight shipped on through billing for a continuous shipment over a route, partly by water and partly by rail. In reversing the conviction below, the Court of Appeals of the Third Circuit said (p. 564):

“Finally, it is pertinent to remark that the legislation which has been under examination is highly penal in its character, and while it is the duty of the courts to so construe its terms as to suppress, if possible, the mischief against which it is directed, it is no less their duty to see to it that no person, natural or artificial, shall be held guilty of a crime, upon an interpretation of the statute creating it, which does not appear, with at least a reasonable degree of certainty, to be the correct one.”

In *C. & N. W. Ry. Co. v. Osborne*, 52 Fed. Rep., 912, Mr. Justice Brewer while sitting at the Circuit, in construing the identical act now under consideration, laid down this rule (p. 914):

“While it is the duty of the courts to see that the provisions established by congress are not frittered away on technical or trifling grounds, yet, it is also equally their duty to see that such a legislation is not carried beyond its clear scope, and that the owners of private capital invested in the business of transportation be not deprived of their liberty of contract and right of control any further than the lawmaking power has intended that they should be.”

Certainly it cannot be contended that the interpretation insisted upon by the Commission is clearly apparent upon the face of the law.

But—the rule is declared by this court when the language is ambiguous, as follows:

“Under these circumstances, we are compelled to ascertain the legislative intention by a recurrence to the mode in which the embarrassing words were introduced, as shown by the journals and records, and by giving such construction to the statute as we believe will carry out the intentions of Congress.”

Blake v. National Banks, 90 Wallace Rep., 307 (319).

To the same effect is *Smith v. Townsend*, 148 U. S., 490, where the court said (p. 494):

"It is well settled that where the language of a statute is in any manner ambiguous, or the meaning doubtful, resort may be had to the surrounding circumstances, the history of the times, and the defect or mischief which the statute was intended to remedy. Thus, in *Heydon's Case*, 3 Rep., 7b, it is stated that it was resolved by the Barons of the Exchequer as follows:

'For the sure and true interpretation of all statutes in general, be they penal or beneficial, restrictive or enlarging of the common law, four things are to be disconcerned and considered:

First. What was the common law before making of the act.

Second. What was the mischief and defect for which the common law did not provide.

Third. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth.

Fourth. The true reason of the remedy.'

And by this court, in *United States v. Union Pacific R. R.*, 91 U. S., 72, 79, it was said that 'courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it. *Aldridge v. Williams*, 3 How., 24; *Preston v. Browder*, 1 Wheat., 120.' And in *Platt v. Union Pacific R. R.*, 99 U. S., 48, 64, that 'in endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances.' "

CONCLUSION ON THIS POINT.

In conclusion,—all the light which the study of the times when the original act of 1887 was passed can throw upon the subject; all the light which contemporaneous interpretation may throw upon the subject; all the light afforded by internal evidence of the Act itself; all of the light derived by a comparison of the Act with other legislation upon the same subject; all the rules of interpretation laid down by the courts from the beginning, converge upon and permit of only one single conclusion, to wit:

That Congress did not intend to subject *the water carrier as such* which might become a party to a joint rate with a railroad, to the provisions of the Act. If it did intend to subject any water commerce to its control (which is very doubtful at best) it simply subjected *that traffic* which moved in connection with a railroad over a joint route.

This interpretation of the provision makes of the entire act one complete, harmonious whole and accomplishes the very purpose expressed by Senator Cullom when he said:

“There is no provision in the bill that at all interferes with water transportation unless it is operated under some arrangement with a railroad company or a common carrier by rail *by which it can take advantage of any other railroad that has no water connection with it.*”

The Act was framed to regulate commerce by railroad. The interpretation which the appellees place upon it carries out this intention, and we submit it should be so construed by the court.

THE CONSTITUTIONAL QUESTIONS INVOLVED.

It is quite evident that if the court should agree with the appellees in their contention that Congress did not by the Act to Regulate Commerce intend or attempt to confer upon the Interstate Commerce Commission power to regulate or inquire into all of the business of the Water Carriers merely because *some* portion of their business was conducted under voluntary joint rail and water routes, then the decrees in the cases at bar must be affirmed.

Under such circumstances there would be no occasion or necessity for examining the many important constitutional questions also raised and relied upon, both here and below, by the appellees.

On the other hand, if the court should disagree or differ with the appellees upon the question of the intention of the Congress, these constitutional questions become of the first importance.

The appellees submit that the orders assailed are unconstitutional because as drafted they not only go far beyond any conceivable authority vested in the Commission, but also far beyond any possible authority which the Congress could confer upon the Commission, even if it attempted or desired to do it.

II.

ONE ENGAGED IN INTRASTATE BUSINESS, WHO ALSO ENGAGES IN INTERSTATE BUSINESS, DOES NOT, THEREBY, SUBJECT ALL HIS INTRASTATE BUSINESS TO THE REGULATING POWER OF CONGRESS.

It is proper here to consider the case of "*The Daniel Ball*," 77 Wall., 558, one of the cases cited by appellants to the effect that the voluntary engagement in any business subject to the Act to Regulate Commerce by a person or carrier, thereby subjects all of the business of such persons or the carrier to the jurisdiction of the Commission and the provisions of the act. The remaining cases cited on this point we will reserve for further consideration. (See pp. 143 to 153, *post*.)

As was pointed out in the court below, the case of "*The Daniel Ball*" will not permit of any such interpretation. Without going into an exhaustive analysis, sufficient it to say, that the language of the court forbids the inference which the learned counsel attempted to draw therefrom.

In this case, the Congress passed an act regulating the navigable waters of the United States, and a steamboat engaged in the transportation of goods originating in Grand Rapids, Michigan, and destined to points beyond the State of Michigan, violated the provisions of the Act. (See p. 559.) The boat was prosecuted therefor. After finding that the river in question was a navigable water of the United States, and therefore subject to the regulation of Congress, this court

used this language, referring to the steamer (p. 565):

“So far as she was employed in transporting goods destined for other States, * * * she was engaged in commerce between the states, and however limited that commerce may have been, she was, *so far as it went*, subject to the legislation of Congress. * * * *To the extent* in which each agency acts in *that transportation*, it is subject to the regulation of Congress.”

The court made the same distinction in the case of *Cincinnati, New Orleans & Texas Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S., 184.

Referring to an arrangement made by the Georgia Railroad with certain interstate carriers with respect to the transportation of interstate commerce on through bills of lading over the line of the Georgia Railroad, this court used this language in the first of the foregoing cases (page 192):

“But when the Georgia Railroad Company enters into the carriage of foreign freight, by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but made by an arrangement for the continuous carriage or shipment from one state to another, and thus becomes amenable to the Federal Act *in respect to such interstate commerce.*”

THE USE OF THE PHRASE “IN RESPECT TO SUCH INTERSTATE COMMERCE” MAKES THE VERY DISTINCTION FOR WHICH WE CONTEND.

Fortunately, however, there is no occasion for ar-

gument upon this question. The last word has been spoken by the Chief Justice in the *Employers' Liability Cases*, 207 U. S., 462 (p. 502): In this case, the court said:

"It remains only to consider the contention which we have previously quoted, that the act is constitutional although it embraces subjects not within the power of Congress to regulate commerce, *because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress.* To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power *not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely state concern.* It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

III.

AN ACT OF CONGRESS, OR THE ORDER OF AN OFFICER OF THE FEDERAL GOVERNMENT, OR A SUBORDINATE BODY, CREATED BY AN ACT OF CONGRESS, OR A DECREE OF A FEDERAL COURT WHICH UNDER THE GUISE OR THE PRETENSE OF REGULATING INTER-STATE COMMERCE, IS SO BROAD IN ITS SCOPE AS TO IN FACT REGULATE OR INTERFERE WITH INTRA-STATE COMMERCE, IS VOID.

(1) By reference to the rules prescribed for the accounting methods which are attached in cases 880 and 881, it will appear that not one single rule prescribed by the Commission is limited either to the joint rail and water business of the water carriers or to the interstate port to port business of the water carriers, but each rule is so framed as to include within its scope all of the business of the water carriers, including (a) port to port interstate business; (b) port to port intrastate business; (c) the joint rail and water business, and (d) in the case of the White Star Line Company, the business conducted at its two amusement parks.

Even if it admitted (which we deny) that under the Act to Regulate Commerce as passed, Congress did intend to subject some of the business of the water carriers to regulation by the Commission, nevertheless, it is stated time and again in the bills of complaint by apt phraseology that the orders entered by the Commission have no reasonable, legitimate or necessary connection with the regulation of such traffic, if any, as the Commission may have the power to regulate.

There is no doubt about these facts. They are admitted by the demurrers,

(2) By reference to the inquiries made in the special report Series Circular No. 10, copies of which are attached to bills in the cases Nos. 879 and 882, it will appear that not one single inquiry is limited either to the joint rail and water business of the water carriers, or to the port to port interstate business of the water carriers, but the inquiries are so propounded as to require responses thereto with reference to all of the business of the water carriers from every source whatsoever, including (a), the port to port interstate business; (b) the port to port intrastate business; (c) the joint rail and water business; and, (d) in the cases of the White Star Line, the business in connection with the operation of its amusement parks.

Many of the inquiries contained in the interrogatories propounded relate wholly to the internal affairs of the corporations, and do not by the remotest stretch of the imagination affect or relate to interstate commerce and would not, if answered, give the Interstate Commerce Commission any information which could possibly have any bearing or effect or enter into any interstate commerce regulation which they could possibly have in mind. Take as an illustration the interrogatories propounded in question 5 on page 5, Exhibit "A" of the bills of complaint in cases numbers 879 and 882; or the inquiries propounded in question 11; or the inquiries propounded in question 14. Such inquiries relate solely to the internal affairs of the corporations or to matters and things not connected with interstate commerce.

In other words, the rules prescribed and information demanded, goes far beyond any business, the regulation of which is committed to Congress.

Under such circumstances, the question is—not whether the rules and regulations established by Congress or some subordinate body *are wise, or economically desirable, or politically expedient, or beneficial.*

The question is,—whether the action taken transcends the power vested in Congress or by it vested in any subordinate tribunal.

In *Ill. Cent. R. R. Co. v. McKendree*, 203 U. S., 514, the Secretary of Agriculture, acting under the authority vested in him by Congress, established a quarantine line running east and west through the State of Tennessee. In so doing, he selected the same quarantine line which had been fixed by the State of Tennessee for its intrastate business.

Referring to the order which he issued, the court used this language (p. 528):

“It is urged by the government that it was not the intention of the secretary to make provision for intrastate commerce, as the recital of the order shows an intention to adopt the state line, when the state by its legislature has passed the necessary laws to enforce the same completely and strictly. But the order in terms applies alike to interstate and intrastate commerce. *A party prosecuted* for violating this order *would be within its terms* if the cattle were brought from the south of the line to a point north of the line *within the State of Tennessee*. It is true the secretary recites that legislation has been passed by the State of Tennessee to enforce the quarantine line, but

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he does not limit the order to interstate commerce coming from the south of the line, and as we have said, the order in terms covers it. We do not say that the state line might not be adopted in a proper case, in the exercise of Federal authority, if limited in its effect to interstate commerce coming from below the line, but that is not the present order, and we must deal with it as we find it. Nor have we the power to so limit the secretary's order as to make it apply only to interstate commerce, which it is urged is all that is here involved. For aught that appears upon the face of the order, the secretary intended it to apply to all commerce, and whether he would have made such an order, if strictly limited to interstate commerce, we have no means of knowing. The order is in terms single, and indivisible."

And again on page 530, the court used this language:

"We think these principles apply to the case at bar, and that this order of the secretary, undertaking to make a stringent regulation with highly penal consequences, is single in character, and includes commerce wholly within the state, thereby exceeding any authority which Congress intended to confer upon him by the act in question, if the same is a valid enactment."

In *Addyston Pipe & Steel Co. v. United States*, 175 U. S., page 211, the government had filed a bill against a combination of pipe shops south of the Ohio river charging them with violation of the so-called Sherman Anti-Trust Act. They had been found guilty and the combination had been ordered dissolved. The decree as entered by the trial court required the dissolution of the combination, not only insofar as it affected interstate commerce, but also

with respect to the transportation and delivery of pipe (as stated by this court on page 247) *wholly within one state*.

In deciding the case the court said (246):

“It is almost needless to add that we do not hold that every private enterprise which may be carried on chiefly or in part by means of interstate shipments is therefore to be regarded as so related to interstate commerce as to come within the regulating power of Congress. * * * The views above expressed lead generally to an affirmance of the judgment of the Court of Appeals. In one aspect, however, that judgment is too broad in its terms—the injunction is too absolute in its directions—as it may be *construed as applying equally to commerce wholly within a state as well as to that which is interstate or international only*. This was probably an inadvertence merely. Although the jurisdiction of Congress over commerce among the states is full and complete, *it is not questioned that it has none over that which is wholly within a state*, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. *It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a state, by reason of the fact that the combination also covers and regulates commerce which is interstate*. The latter it can regulate, while the former is subject alone to the jurisdiction of the state. The combination herein described covers both commerce which is wholly within a state and also that which is interstate. * * *

To the extent that the present decree includes in its scope the enjoining of defendants thus situated from combining in regard to contracts for selling pipe in their own state, it is modified, and limited to that portion of the com-

bination or agreement which is interstate in its character. As thus modified, the decree is affirmed."

There is a great wealth of authorities upon this subject, but again the last word has been spoken in the *Employers' Liability Cases*, *supra*.

At the inception of the opinion, the Chief Justice, speaking for the court, drew sharply the distinction between the power of Congress to regulate interstate commerce and the power of the states with respect to their intrastate commerce.

On page 492, he said (quoting from the case of *Gibbons v. Ogden*, 9 Wheat., 1, 196):

" 'We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than as are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.'

Accepting, as we now do and as has always been done, this comprehensive statement of the power of Congress, we also adopt and reiterate the perspicuous statement made in the same case (p. 194), of those matters of state control which are not embraced in the grant of authority to Congress to regulate commerce:

'It is not intended to say that these words

comprehend that commerce, which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states.' Such a power would be inconvenient and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one." * * *

After deciding that Congress did have the power to regulate the relationship of master and servant between a common carrier engaged in interstate commerce and its employes also engaged in interstate commerce, the Chief Justice, proceeded to consider whether or not, because of the power last conceded, it likewise followed that Congress, as a part of its regulation of the interstate carrier with respect to its interstate employes, could also regulate the relationship with respect to all of its employes.

On page 498, the court said:

"The act then being addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employes, without qualification or restriction as to the business in which the carriers or their employes may be engaged at the time of the injury, of necessity includes subjects wholly outside of the power of Congress to regulate commerce. Without stopping to consider the numerous instances where, although a common carrier is engaged in interstate commerce, such carrier *may in the nature of things also transact business not interstate commerce, although such local business may indirectly be related to interstate commerce, a few illustrations* showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of the power

which is exerted by the statute. *Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a state. Take again the same road having shops for repairs, and it may be for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest besides the possibility of its being engaged in other independent enterprises. Take a telegraph company engaged in the transaction of interstate and local messages. Take an express company engaged in local as well as in interstate business. Take a trolley line moving wholly within a state as to a large part of the business, and yet as to the remainder crossing the state line.*

As the act thus includes many subjects wholly beyond the power to regulate commerce and depends for its sanction upon that authority, it results that the act is repugnant to the Constitution and cannot be enforced unless there be merit in the propositions advanced to show that the statute may be saved."

The government in that case made the identical distinction which it tries to make in the cases at bar with respect to Section 20. As stated by the Chief Justice, the contentions of the government in the case were (see page 499):

"It is the *carrier* and not its employes that the act seeks to regulate, and the carrier is subject to such regulations because it is engaged in interstate commerce.

* * * * *

By engaging in interstate commerce the carrier chooses to subject itself and its business to the control of Congress, and cannot be heard to complain of such regulations."

It will be observed that this is the precise point made by the government in the cases at bar.

But the Chief Justice after discussing whether or not the court could by judicial interpretation limit the act so as to make it apply only to employes engaged in interstate commerce, and after citing the case of *Ill. Cent. R. R. Co. v. McKendree*, *supra*, with approval and deciding the court could not by judicial interpretation limit the act, continued (p. 502):

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, *even although the conditions would be otherwise beyond the power of Congress*. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

In conclusion it is so well settled that, under the

circumstances existing in the cases at bar, the court will not by judicial interpretation limit the order and endeavor to make valid that which in its essence and entirety is void, that we do not elaborate this point beyond the mere citation of authorities. See, Illinois Central v. McKendree, supra, page 529.

Employer Liability cases, supra, page 501.
United States v. Reese, 92 U. S., 214, 221.
Trade-Mark cases, 100 U. S., 82 (90).
United States v. Ju Toy, 198 U. S., 253, 262, 263.

We respectfully submit that if there were no other authority and no other question raised in the cases at bar, that the language of the court just quoted and the authorities last cited are decisive of the appellees' rights.

IV.

SECTION 20 OF THE ACT TO REGULATE COMMERCE IS VOID BECAUSE IT IS AN UNLAWFUL DELEGATION OF LEGISLATIVE POWER:

- (1) THE LAW GIVES THE COMMISSION THE DISCRETION TO DETERMINE WHETHER IT WILL LEGISLATE OR NOT;
- (2) THE LAW ALSO CONFERS DISCRETIONARY POWER UPON THE COMMISSION TO DETERMINE WHAT (IF ANY) THE LEGISLATION SHALL BE:
- (3) IT IS THUS A COMPLETE DIVESTITURE OR DELEGATION OF LEGISLATIVE POWER.

An intelligent discussion of this phase of the case necessarily involves a close analysis of this pro-

vision of the Act. With reference to this subject, Section 20 reads as follows:

“And the Commission may, *in its discretion*, for the purpose of enabling it better to carry out the purposes of this act, prescribe a *period of time* within which all common carriers subject to the provisions of this act shall have as *near as may be* a uniform system of accounts and the manner in which such accounts shall be kept.”

And again the same paragraph:

“The Commission may, *in its discretion*, prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to the provisions of this Act, * * *.”

It will be observed at the inception of this branch of the case, that the language of the act does not confer upon the Commission any mere administrative or executive function.

(1) It does not direct the Commission to establish the forms of accounts, records and memoranda.

(2) It does not determine that it is necessary that forms of accounts, records and memoranda shall be prescribed.

(3) It does not prescribe that all common carriers shall keep a uniform system of accounts.

(4) The act says that

“The Commission may, *in its discretion*, * * * prescribe a *period of time* within which all common carriers subject to the provisions of the Act shall have as *near as may be* a uniform system of accounts.”

(5) What the Act says is—that the Commission may prescribe a *period of time* within which the

carriers shall have as near as may be a uniform system of accounts.

In other words, if there is to be any change in accounting methods, it is left for the carriers in this provision of the Act to adopt *as near as may be a uniform system of accounts.*

(6) Whatever authority is given to the Commission, whether it be under the sentence of the Act last quoted or under the sentence giving the Commission discretionary power to prescribe forms, accounts, records, and memoranda, it is *wholly discretionary.*

(7) The insertion of the words "as near as may be" indicates conclusively that Congress recognized that there might be many reasons why there could not be a uniform system of accounting. Having recognized that there were reasons which might prohibit a uniform system of accounting, it did not require or command it to be established.

It is alleged in the bills and admitted by the demurrers that the accounting methods prescribed by the Commission, are not those which the Board of Directors have heretofore had in force or believed to be for the best interests of the company, but the Interstate Commerce Commission has entered an order solely at its own discretion which has the effect of law, by which under penalties of heavy fines, the carriers are directed to inaugurate a new system of bookkeeping.

Not only does the order have the effect of legislation, it is in fact legislation.

It is legislation in the broadest sense of the word, for it is limited by no terms or conditions.

The appellees submit that it is impossible for the human mind to conceive of a more complete delegation of legislative power than is contained in Section 20 with respect to the establishment of the accounting methods of carriers.

Such a power the Congress may not delegate.

In no case yet decided by the court has any language been used which would put the stamp of its approval upon such an unqualified divestiture of legislative powers.

The court has decided that Congress may declare the law and commit to the administrative or executive body or officer, the duty and power to administer the law in its details. Thus Congress may prescribe that the free importation of specific articles shall be suspended in the case of any country that imposes exactions upon the products of the United States which the president finds to be unreasonable, but in such case, Congress enacts the law and leaves it for the president to determine the fact.

Field v. Clark, 143 U. S., 645.

Congress may also prescribe for the removal of bridges which constitute unreasonable obstructions of navigation and the Secretary of War may be appointed to determine and find the fact whether or not navigation is unreasonably obstructed.

Union Bridge Co. v. U. S., 204 U. S., 364.

Congress may also prohibit the importation of low grades of tea unfit for consumption and leave

to the Secretary of the Treasury the duty of determining the fact what grades are, or are not unfit.

Buttfield v. Stranahan, 192 U. S., 486.

In not one of these cases did Congress confer upon any officer or subordinate body, the right to enact legislation in their discretion. This it cannot do.

In *Wayman v. Southard*, 10 Wheat., 1, the court said (p. 43):

"It will not be contended that Congress can delegate to the courts or to any other tribunal, powers which are strictly and exclusively legislative."

In *Field v. Clark*, *supra*, the court said (p. 693):

"The true distinction' * * * 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. *The first cannot be done; to the latter no valid objection can be made.*'"

Let the language be well noted. In so many words, it is said that Congress cannot delegate the power to make the law, *which necessarily involves a discretion as to what it shall be*.

In the cases at bar with respect to the accounting methods, the power of the legislation respecting these methods is absolutely in the discretion of the Commission. Congress has established no standard. The Commission is not given the power to execute the law or to determine whether or not a certain fact exists upon which the operation of the law depends. It

is given the very power to make the law. This cannot be delegated.

As was said in *Harriman v. Interstate Commerce Com.*, 211 U. S., 407, where it was suggested that Congress could not delegate its legislative power and that, therefore, the action of the Commission was void (p. 418):

“Whether it (referring to Congress) could delegate the power, if it possesses it, we also leave untouched, beyond remarking that so unqualified a delegation would present the constitutional difficulty in most acute form.”

In the provisions of the act which were under consideration there, there was no attempt to delegate legislative power, but in the provisions under consideration here, there is a total and unqualified delegation from which no escape can be had.

THE CASES OF UNITED STATES V. GRIMAUD, 220 U. S., 506,
AND ST. LOUIS AND IRON MOUNTAIN CO. V. TAYLOR, 210
U. S., 281.

It will not do to say that the cases at bar are controlled either by *United States v. Grimaud*, 220 U. S., 506, or by *St. Louis & Iron Mountain R. R. Co. v. Taylor*, 210 U. S., 281, 287.

In the Grimaud case Congress had passed an Act reading as follows:

“The Secretary of the Interior shall make provision for the protection against * * * depredation upon the public forest and forest reserves * * * and may make such rules and regulations * * * as will insure the object of such reserves, viz., * * * to preserve the forests thereon from destruction. * * *

and any violation of the provisions of this Act or such rules and regulations shall be punished as is provided for in the Act of June 4, 1888."

The Act of June 4, 1888, prescribed the penalties for the violation of the rules. The distinction is clear.

(a) It will be observed in the Grimaud case Congress imposed the imperative duty upon the Secretary of the Interior to make provision for the protection against depredation upon the public preserves.

In the case at bar no duty was imposed by Congress upon the Interstate Commerce Commission to prescribe accounting methods, or a uniform system of accounts.

(b) In the Grimaud case the Secretary of the Interior had no discretion, Congress had determined that that protection was necessary and ordered him to establish it.

In the case at bar Congress determined nothing. It not only left the necessity for legislation to the discretion of the Commission, but it also left the Commission full authority to legislate.

(c) Again—even if the delegation was complete in the Grimaud case—nevertheless the distinction between it and the cases at bar is clear. In the Grimaud case Congress was legislating with respect to the *private property* of the United States Government—property which it owned in the same way that an individual owns his property in fee simple, and concerning which it had *as owner* full author-

ity to delegate any power it saw fit to any subordinate agent.

In the cases at bar Congress was legislating with respect to the property of third persons over which, *as owner* it had no authority whatsoever, and concerning which it could only legislate not as owner, but as Government.

The distinction between these cases and the *Grimaud* case is clear, clean and conspicuous.

Neither will it do to say that the case is controlled by the case of *St. Louis & Iron Mountain R. R. Co. v. Taylor*, 210 U. S., 281.

That case is distinguished in the opinion of the court itself. Congress itself determined that there should be a standard height for drawbars for freight cars, and left it to the Commission to determine in connection with the American Railway Association what the standard height should be.

In the case at bar Congress has not determined that there shall be a uniform system of accounting.

DECISIONS OF THE STATE COURTS.

The courts of last resort of the states of Pennsylvania, Michigan, Wisconsin, Minnesota and Ohio are unqualifiedly committed to the position for which we contend.

In *O'Neil v. American Fire Ins.* (Penn. 1895), 30 Atlantic, 943, the legislature of Pennsylvania passed a law, Section 1 of which provided (p. 944):

"That the insurance commissioner shall prepare and file in his office * * * a printed form

in blank, of a contract or policy of fire insurance, together with such provisions, agreements or conditions as may be endorsed thereon or added thereto, and form a part of such contract or policy; and such form when filed shall be known and designated as the 'Standard Fire Insurance Policy of the State of Pennsylvania.' "

Section 2 provided for the incorporation of the provisions of said policy in contracts of insurance.

The constitutionality of the delegation by the legislation to the commissioner of the power to prescribe the form was raised in the case. The court said (944):

"It may be well to say in this place that we do not now deny the power of the legislature to direct the form of a policy of insurance against fire. * * * The question is not, therefore, one of power (of the legislature) over the subject, but of the manner in which the conceded power must be exercised."

Continuing the court said:

"The Act of 1891 is a delegation of legislative power, because: First, the act does not fix the terms and conditions of the policy, the use of which it commands. Second, it delegates the power to prescribe the form of the policy and the conditions and restrictions to be added to and made part of it, to a single individual. * * * It will not do to say that the preparation of the form was an unimportant matter of detail, or an act partaking of an executive or administrative character. *It was the sole purpose of the act.* It was the only subject named in its title. * * * *We do not see how a case could be stated that would show a more complete and unconstitutional surrender of the legislative function to an appointee than that pre-*

sented by the act of 1891. By its provisions the legislature says, in effect, to its appointee: 'Prepare just such a policy or contract as you please. We do not care to know what it is. The governor shall have no opportunity to veto it. File it in your own office, and we will compel its adoption, whether it is right or wrong, by the punishment of every company, officer, or agent who hesitates to use it.' "

The law was held unconstitutional.

The case is a most interesting one. It is on all fours with the case at bar and cannot be distinguished.

In *Anderson v. Manchester Fire Assur. Co.* (Minn. 1895), 63 N. W., 241, an act was passed by the legislature providing that:

"Section 1. The insurance commissioner shall prepare and file in his office on or before the first (1st) day of August, A. D. eighteen hundred and eighty-nine (1889), a printed form in blank of a contract or policy of fire insurance, together with such provisions, agreements or conditions as may be endorsed thereon, or added thereto, and form a part of such contract or policy, and such form when so filed shall be known and designated as the Minnesota Standard Policy. Said insurance commissioner shall within sixty (60) days from the passage of this act prepare, approve and adopt a printed form in blank of a contract or policy of fire insurance, together with such provisions, agreements and conditions as may be endorsed thereon or added thereto and form a part of such contract or policy, and such form shall, as near as the same can be made applicable, conform to the type and form of the New York Standard Fire Insurance Policy, so-called and known. Provided, however, that five (5) days' notice of

cancellation by the company shall be given, and provided, that proof of loss shall be made within sixty (60) days after a fire."

It was contended in the Supreme Court of Minnesota that the phraseology of the act differed from the phraseology of the Pennsylvania statute, in that the legislature had prescribed a form when it provided that the printed form * * * "shall, as near as the same can be made applicable, conform to the type and form of the New York Standard Fire Insurance Policy, so-called and known."

Section 2 of the act provides:

"The insurance commissioner may call upon the attorney general for such assistance as to him may seem necessary in the preparation of the aforesaid standard insurance policy, and it is hereby made the duty of the attorney general to perform such service."

The court, however, held that the distinction was not valid and that the law was void. On page 242 it said:

"If the insurance commissioner had no discretion, and was to act merely as a copyist of the New York form, why was it deemed necessary to provide for him the assistance of the attorney general, in his onerous duties of copying the same? Again, why should the words 'provisions, agreements and (or) conditions' occur so often in the statute where they are of no particular importance, and be left out in the very connection and very place where they would be all-important? Again, the statute provides that 'such form shall, as near as the same can be made applicable, conform to the type and form of the New York "standard." ' It is insisted that this authorizes only such changes as striking out the words 'New York,' and in-

serting 'Minnesota,' and that for the purpose of permitting such changes the words, 'as near as the same can be made applicable,' were used. There are no such changes to be made. The words 'New York' do not occur in the provisions of the New York standard. There is not a word in the provisions of the New York form which it is necessary to change in order to apply the form to Minnesota. *Then the legislature must, at least, have intended to give the insurance commissioner power to exercise his judgment in determining which of the provisions of the New York form were applicable to Minnesota, and which were not, and this would be an unconstitutional delegation of power.* Conceding, without deciding, that this would be a proper way to make the New York form a part of the Minnesota statute, if the legislature intended to adopt the New York form, they could have said so in a very few words. * * * He (referring to the insurance commissioner) was to prepare and adopt a standard form, once for all, and when so adopted, it was to remain irrevocable until changed by subsequent legislation. *A clearer instance of an attempt to delegate legislative power could hardly be suggested.* * * * We are of the opinion that said chapter 217 is unconstitutional and void."

In *Dowling v. Lancashire Ins. Co.* (Wisconsin, 1896), 65 N. W., 758, a similar act was under consideration. The Supreme Court of Wisconsin went into an exhaustive consideration of the subject. The court said:

"That no part of the legislative power can be delegated by the legislature to any other department of the government,—executive or judicial,—is a fundamental principle in constitutional law essential to the integrity and maintenance of the system of government established by the constitution. The difficulty experienced

by courts in distinguishing between legislative power, which cannot be delegated, and discretionary powers of an executive or administrative character, which may be intrusted to other departments or officers, in the conduct of public affairs, has been frequently experienced and acknowledged; and it arises in a great measure, from the fact that powers of the most important character, not essentially legislative, but which the legislature might properly, in the first instance, exercise or determine by its own judgment, are frequently devolved by the legislature upon other departments, officers, or bodies. * * *

In considering the true test as to whether a power is strictly legislative, or whether it is administrative, and merely relates to the execution of the law, Ranney, J., in *Cincinnati, W. & Z. Ry. Co. v. Clinton Co. Com'rs.*, 1 Ohio St., 88, said: 'The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter no valid objection can be made.' Substantially the same conclusion was reached in *Field v. Clark*, 143 U. S., 650. * * *

For these reasons, we hold that the provision authorizing the insurance commissioner to prepare, approve and adopt a printed form, in blank, of a contract or policy of fire insurance, together with such provisions, agreements or conditions as may be indorsed thereon or added thereto and form a part of such contract or policy, and that such form shall, as near as the same can be made applicable, conform to the type and form of the New York standard fire insurance policy, so-called and known, is unconstitutional and void. Conclusions in accord with these views, in somewhat similar cases, have been reached in other states."

An exhaustive review of the question was also made by the Supreme Court of Michigan in *King v. Concordia Fire Ins. Co.* (Michigan, 1905), 103 N. W., 616.

In that case the defendant insured the plaintiff, a fire occurred and the plaintiff sued and recovered judgment upon the policy and the defendant appealed. The question was whether a certain rider upon the face of the policy was valid and binding. The rider in question was a rider added to what was known as the Michigan Standard Policy. The law of Michigan *had invested in a commission* and not in a single individual, the power to draft a form of fire insurance policy. The law itself provided that the commission should, in drafting such form, attempt to secure the following results:

“First, fairness and equity between the insurers and the assured; second, brevity and simplicity; third, the avoidance of technical words and phrases; fourth, the avoidance of conditions, the violation of which by the assured would, without being prejudicial to the insurer, render the policy void or voidable at the option of the insurer; fifth, the use of as large and fair type as is consistent with a convenient size of paper or parchment; sixth, the placing of each separate condition in a separate paragraph, and the numbering of the paragraphs.”

It will be seen that the legislature thus went much farther than Congress did in the cases at bar towards prescribing what the forms prepared by the commission should contain. But—the matter was in its essence left to the discretion of the commission just as the preparation of the forms are left to the Interstate Commerce Commission, as in the case at bar.

The law also was, that the form might be changed whenever "they (the commission) shall deem it necessary."

The question was whether the standard form of policy prepared by the Commission under such circumstances was valid. If so, the rider was void. On the other hand, if the law providing for the creation of the standard form of policy by the commission was void then the entire contract, including the rider, was valid. The Supreme Court of Michigan considered the question at length in the following language (p. 619):

"Says Judge Cooley in his *Constitutional Limitations* (6th Ed.), p. 137: 'One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. *The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.*' Was the power which this statute delegated to the insurance commission legislative in character? It certainly was a power which the legislature itself might rightfully exercise, but it does not follow from the circumstances that it was a legislative power (see *Wayman v. Southard*, 10 Wheat., 1, 6 L. Ed., 253), for the legislature

often exercises powers of an executive or administrative character which it may delegate. * * *

The proper distinction between such delegated power and legislative power is stated in Locke's Appeal, 72 Pa., 498, 13 Am. Rep., 716 as follows: 'The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action to depend.' This distinction is approved in *Field v. Clark*, *supra*, and in *Dowling v. Lancashire Ins. Co.*, *supra*. * * *

'The true distinction,' said Ranney, J., in *Cincinnati, etc., R. Co. v. Commissioners*, 1 Ohio St., 88, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferred authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' This distinction is also approved in *Field v. Clark* and *Dowling v. Lancashire Ins. Co.*, *supra*. Tested by this distinction, the authority delegated to the insurance commission by the legislation under consideration was not administrative, but was legislative. It cannot be said that the legislature merely delegated to the commission power to determine 'a fact or state of things upon which the law makes, or intends to make, its own action to depend'; nor that it merely delegated to the commission 'discretion as to its execution to be exercised under and in pursuance of the law.' On the contrary, it delegated to the commission authority to itself make the law (which was evidenced by the form of insurance policy filed with the commissioner of insurance), and to change this law 'whenever they shall deem it necessary.'

As said by the Supreme Court of Wisconsin in a similar case: 'Had the commissioner wholly declined to prepare, approve and adopt any form whatever, it would have been possible to

have carried into effect so imperfect or uncertain an enactment, or to transact business under it. *Within the lines indicated, a discretion was reposed in the commissioner as to the form of the policy which embodied the substance of the contract, and which was to have the sanction and force of law. The effect clearly was to transfer to him bodily the legislative power of the state on that subject.*' *Dowling v. Lancashire Ins. Co.*, 92 Wis., at page 73, 65 N. W., at page 471 (31 L. R. A., 112). In the following cases similar laws were also adjudged unconstitutional: *O'Neil v. Ins. Co.*, 166 Pa., 77, 30 Atl., 945; *Anderson v. Manchester Fire Assurance Co.*, 59 Minn., 182, 60 N. W., 1095, 63 N. W., 241, 28 L. R. A., 609, 50 Am. St. Rep., 400; *Phoenix Ins. Co. v. Perkins* (S. D.), 101 N. W., 1110."

Neither will it do to say in answer to these authorities that the provision in the act that the form established be uniform is an establishment of a standard by Congress. Uniformity only means that whatever may be adopted shall apply to all carriers alike. *But the fact remains that the forms established in the discretion of the Commission, be they ever so improper, or unfair, or unreasonable or vicious, are nevertheless the law.*

It will be seen that the state courts without dissent adopted and applied the language of the Supreme Court of the United States in *Field v. Clark*, *supra*, as being direct and unquestioned authority for the proposition that the delegation in the case at bar is unconstitutional.

IN CONCLUSION ON THIS BRANCH OF THE CASE.

On this point, as has been stated, the appellees submit that it is impossible for the human mind to conceive of a more complete and unqualified delegation of legislative power than is contained in Section 20.

If this legislation be constitutional, then there is no meaning left to the repeated assertions made by this court in many previous decisions, to-wit, "that Congress may not lawfully delegate its legislative power."

If this legislation be constitutional, then there is no reason why Congress may not rule the country by commissions; transfer all of the authority vested in Congress to subordinate commissions; and, aside from the act creating the commissions, discontinue all congressional business. Instead of being governed by the united wisdom of the entire Congress acting in concert each member with the other, the whole theory of the Federal Government can be upset and turned over to as many subordinate commissions as Congress may see fit to create.

The appellees submit this is not the law.

V AND VI.

WHETHER OR NOT A POWER CLAIMED BUT NOT GRANTED IS A NECESSARY INCIDENT TO THE POWER GRANTED IS (WHERE THE FACTS ARE NOT CONCEDED) TO BE DETERMINED BY THE COURT.

IF UNDER THE PRETENSE OF EXERCISING A POWER GRANTED CONGRESS OR A SUBORDINATE BODY GOES BEYOND THAT WHICH IS NECESSARY TO THE EXERCISE OF THE POWER, THEN SUCH ACTION ON THE PART OF CONGRESS OR ITS SUBORDINATE BODY IS VOID.

At the threshold of the argument upon this point certain propositions must be conceded by the government:

(1) That the power to prescribe accounting methods of any kind was not expressly granted in the Constitution to the Congress;

(2) That the power to investigate into all of the details of the business affairs of a person merely because of the fact that such person is, as to some of its business engaged in interstate commerce, was not expressly granted by the Constitution;

(3) That if either of the foregoing powers exists at all, it must be placed upon the ground that it is necessarily incident to the exercise of a power expressly granted.

In the cases at bar (as has been stated supra) it is repeatedly set out in apt language in each of the bills of complaint that it was not necessary for the proper exercise of all the powers granted either to Congress by the Constitution or by Congress to the Commission, for the Commission to prescribe or attempt to prescribe:

(a) *The accounting methods of the carriers for their intrastate or interstate port to port, or amusement park business;*

(b) *That likewise it was not necessary for the Commission in order to exercise all the powers lawfully conferred upon it to require answers to all of the interrogatories referred to in Special Reports Series Circular No. 10.*

These statements of fact are admitted by the demurrers.

Therefore the appellees submit that it is conceded as a fact in these cases that the attempted exercise of authority by the Commission with respect to both the orders in "re accounting methods" and "in re Special Reports Series Circular No. 10" is not necessary to the exercise of the powers granted.

This being a conceded fact in the record, it would seem to be unnecessary to discuss the proposition with which this portion of our brief begins.

Nevertheless, in view of the fact that the government has devoted considerable space in its brief to the presentation of this question we are not averse to discussing it. On this point the appellees submit that:

Whether or not a power claimed but not granted is a necessary incident to a power granted is to be determined by the court.

Interstate Commerce Commission v. Union Pacific R. R. Co. (Oct. Term, 1911, No. 451).

In *Atlantic Coast Line Railroad v. Riverside Mill*, 219 U. S., 186, it was said:

“The test is not merely the matter regulated but whether the regulation is directly one of interstate commerce.”

In *Interstate Commerce Commission v. Illinois Central Railroad Company*, 215 U. S., 452, the court itself considered

“all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to be made.”

Indeed, the court will go still further, and will, as was said in the case last mentioned on page 452, not only determine whether the order is within the scope of the delegated authority, but it will also determine whether the authority

“has been exercised in such an unreasonable manner as to cause it to be within the rule that the substance and not the shadow determines the validity of the exercise of the power.”

The same principle applies whether the order be the order of an administrative body or whether instead of being an order it is a law either of a state or of Congress.

As an illustration in the *Adair* case, 208 U. S., 161, Congress itself had passed an act in which Congress had decided for itself as an incident to the power to regulate interstate commerce, that it had the power to determine when and upon what circumstances employees engaged in interstate commerce could be discharged from the service, but this court decided for itself that the power exercised was not

necessarily incident to the exercise of the power granted. On page 178 it said:

“Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated.”

Proceeding then the court decided that the regulation in question could not be regarded as an incident to the regulation of interstate commerce (180).

Continuing the court said (180) the regulation in question

“under the guise of regulating interstate commerce and as applied to this case arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant Adair.”

So it was in the *Employers' Liability cases*, 207 U. S., 463, that the court laid down the rule that the test was (to be decided by the court) whether the power claimed was necessarily incidental to the power granted. Having established that rule, the court then determined (page 495) that the power claimed was not incidental to the power granted, because (page 502) *it rested upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress.*

The point is that—when a power not granted is exercised upon the claim that it is necessarily incident to the power granted, the court will in each instance examine into the facts and determine whether or not the power claimed is a necessary incident to its exercise, and the court will also determine whether or not it violates any other Constitutional provision.

Under the pleadings in this case the demurrers admit that the exercise of the power is not an incident to the power granted. It would, therefore, seem to follow that the judgments below should be affirmed.

2. In its brief filed here, the government has attempted to discuss the larger question and insists that irrespective of the averments of the bills admitted by the demurrers this court will decide that all of the inquiries made by the Commission were as a matter of law necessarily incident to the powers expressly granted. While we do not believe that this court will permit the government to argue this case except on the record made below, nevertheless we have the following suggestions to make.

RELATION OF A CARRIER ENGAGED IN INTERSTATE COMMERCE TO THE CONGRESS.

(1) It must be conceded that the right to engage in interstate commerce is not created by or derived from the Congress. As was said by Chief Justice Marshall in *Gibbons v. Ogden*, 9 Wheat., 211:

“Pursuing this inquiry at the bar, it has been said that the Constitution does not confer the right of intercourse between state and state. That right derives its source from those laws

whose authority is acknowledged by civilized men throughout the world. This is true. *The Constitution found an existing right and gave the power to Congress to regulate it.*"

The same principle was decided by the Chief Justice in the *Employers' Liability Cases*, *supra*. In answering the argument made by the government the court used this language:

"To state the proposition is to refute it * * *. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress."

OUR DUAL FORM OF GOVERNMENT.

(2) The fact is that under our dual form of sovereignty the Federal Government is supreme in the field of interstate commerce and the state governments are supreme in the field of intrastate commerce, as was said in *McCulloch v. Maryland*, 4 Wheat., 472:

"In America the powers of sovereignty are divided between the government of the union and those of the states. They are each sovereign with respect of the objects committed to it, and neither sovereign with respect to the objects committed to the other."

In *Worcester v. Georgia*, 6 Peters, 515 (1832), the court said (570):

"The powers exclusively given to the Federal Government are limitations upon the state

authorities. But, with the exception of these limitations, the states are supreme and their sovereignty can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of national power."

In *Ableman v. Booth*, 21 Howard, 506 (1858), Chief Justice Taney, speaking for the court, said at page 516:

"The powers of the general government, and of the state, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres."

Again (page 519):

" 'This constitution, and the laws of the United States, *which shall be made in pursuance thereof*, shall be the supreme law of the land, and obligatory upon the judges in every state.' The words in italics shows the precision and foresight which marks every clause in the instrument. The sovereignty to be created was to be limited in its powers of legislation, and if it passed a law not authorized by its enumerated powers it was not to be regarded as the supreme law of the land, nor were the state judges bound to carry it into execution."

In the *License Tax Cases*, 5 Wallace, 462 (1866), Chief Justice Chase, speaking for the entire court, said at page 470:

"But very different considerations apply to the internal commerce or domestic trade of the states. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the states. No interference by Congress with the

business of citizens transacted within a state is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a state is plainly repugnant to the exclusive power of the state over the same subject."

When, therefore, Congress passes beyond the regulation of interstate commerce and exercises the function of regulating or investigating state corporations as to their corporate management, its shares of stock and bonds, its method of bookkeeping, it usurps a power which has never been granted to it, and which is solely vested in the state when created the corporation.

As was said by the court in the *Employer Liability Cases*, 207 U. S., 463, 498:

"Without stopping to consider the numerous instances where although a common carrier is engaged in interstate commerce such carrier may in the nature of things also transact business not interstate commerce, although such local business may indirectly be related to interstate commerce, a few illustrations showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of the power which is exerted by the statute. *Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a state. Take again the same road having shops for repairs and it may be for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest besides the possibility of being engaged in other independent enterprises. Take a telegraph company engaged in the transmission of interstate and local messages. Take*

an express company engaged in local as well as in interstate business. Take a trolley line moving wholly within a state as to a large part of its business and yet as to the remainder crossing the state line. As the act thus includes many subjects wholly beyond the power to regulate commerce and depends for its sanction upon that authority, it results that the act is repugnant to the Constitution." * * *

Continuing the court said, referring to the contention of the government which it repudiated *in toto*:

"It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters which from the beginning have been, *and must, continue to be, under their control so long as the Constitution endures.*"

In *Pennsylvania v. Knight*, 192 U. S., at page 28, the court said:

"As shown in the opinion from which we have just quoted *many things have more or less close relation to interstate commerce, which are not properly to be regarded as a part of it.* If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce? And where will the limit be placed."

It will be recalled that in that case the court held that the cab service of the Pennsylvania Railroad Company in the City of New York owned, controlled and used by it in connection with the delivery of its interstate passengers, was not interstate commerce, and was, therefore, subject to regulation by the State of New York. Consequently it followed that it was not subject to regulation by the Interstate Commerce Commission. But in the cases at bar the inquiries propounded, and the rules prescribed make no difference and draw no distinction between the cab service, the amusement parks and the transportation business of the carriers.

In other words Congress itself, and as well the Commission, have in the attempted exercise of their power invaded the field which under the Employers' Liability cases and Pennsylvania v. Knight is left solely to the states.

In the Northern Securities case, 193 U. S., page 197, the court said (349):

"So far as the Constitution of the United States is concerned, a state may, indeed, create a corporation, define its powers, prescribe the amount of its stock and the mode in which it may be transferred. It may even, authorize one of its corporations to engage in commerce of every kind domestic, interstate and international. The regulation or control of purely domestic commerce of a state is, of course, with the state, and Congress has no direct power over it so long as what is done by the state does not interfere with the operations of the general government, or by any legal enactment of Congress. A state, if it chooses so to do, may even submit to the existence of combinations within its limits that restrain its internal trade."

(3) The authorities hereinabove quoted and many others show that with respect to intrastate business the authority of the State is supreme. It was so held in *McCulloch v. Maryland* and other cited cases. Nothing could be more significant upon this branch of the case than the decision with respect to the cab service of the Pennsylvania Railroad Company in *Pennsylvania v. Knight*. No argument is necessary to demonstrate that Congress is wholly without authority to prohibit the Goodrich Transit Company and the White Star Line from keeping such memoranda as they, or either of them, see fit with respect to their intrastate business and especially is this so with respect to the two amusement parks of the White Star Line. It will be observed that the act in terms prohibits the keeping of these memoranda with respect to such business even though the carriers conform to the rules prescribed by the Commission and merely *keep additional memoranda for their own private purposes*.

One simple illustration is sufficient to indicate how far beyond its granted power the Congress has gone in this respect. Let us suppose that the Congress should create a corporation to do an electric light and transportation business in the District of Columbia and that the terms of its charter were so broad that it was not *ultra vires* the corporation to extend its *transportation business* across the Potomac into Virginia. Suppose that thereafter the State of Virginia should, under the pretense of exercising its power to regulate the intrastate business, pass a law under which it proposed to impose a fine upon the

corporation of the District of Columbia unless it should keep all of its books as prescribed by the State of Virginia.

Suppose also that it should impose another fine under the pretense aforesaid, and for no other purpose whatsoever, unless the corporation of the District of Columbia should divulge to it all of the details of its electric light business in the District of Columbia, no part of which was conducted in the State of Virginia.

Suppose, to cap the climax, that under the same pretense the State of Virginia should impose a fine upon the corporation of the District of Columbia if it should keep any other books with respect to its electric light business in the District of Columbia other than those prescribed by the State of Virginia.

What would be said of such a law? The answer is so evident that it is not necessary to make it.

Nevertheless, it is respectfully submitted that no distinction can be drawn between such a law and Section 20 attacked in the cases at bar.

Furthermore, it would be ridiculous for Virginia to assert that it is necessary, in order to regulate the intrastate transportation in the State of Virginia, for it to prescribe the accounting methods and inquire into the details of the electric light business conducted in the District of Columbia.

It is equally as ridiculous for the Commission to assert that it is necessary for it in the discharge of its lawful duty of regulating interstate commerce, to

inquire into the details of the intrastate business of the carriers, and to prohibit the carriers from keeping their own accounts of their intrastate business, including, among other things, such business as their cab and amusement park business.

*Again, it may be said that as far as the statute is concerned the provision against keeping any other record or memoranda may be segregated from the other provisions of the statute in regard to a uniform system of accounts and the balance of the section sustained. This argument cannot apply to the order of the Commission. An order entered by the Interstate Commerce Commission is an entirety and this court is without power to modify the order. If a part is void the whole is void.**

McKendree case and other cases, supra.

VII AND VIII.

SECTION 20 OF THE ACT TO REGULATE COMMERCE AND THE ORDERS OF THE COMMISSION BOTH IN RE ACCOUNTING METHODS AND IN RE SPECIAL REPORT SERIES CIRCULAR NO. 10 ARE VOID:

- (1) THEY ARE NOT A REGULATION OF THE RATES ON WHICH INTERSTATE COMMERCE MOVES.
- (2) THEY ARE NOT A REGULATION OF THE ROADBED OVER WHICH INTERSTATE COMMERCE MOVES.
- (3) THEY ARE NOT A REGULATION OF THE VEHICLES IN WHICH INTERSTATE COMMERCE IS CARRIED.
- (4) THEY ARE NOT A REGULATION OF THE EMPLOYEES ENGAGED IN HANDLING INTERSTATE COMMERCE.

*A further consideration of the entire subject is contained in the discussion of points VII and VIII of our brief which next follows.

- (5) THEY ARE NOT A REGULATION OF INTERSTATE COMMERCE ITSELF. ON THE CONTRARY THEY ARE AN INTERFERENCE WITH THE INTERNAL AFFAIRS OF THE APPELLEES.
- (6) THEY PROHIBIT THE APPELLES FROM KEEPING FOR THEIR CORPORATE PURPOSES SUCH BOOKS AS IN THEIR OWN JUDGMENT THE CORPORATE NECESSITIES MAY REQUIRE.
- (7) THEY PROHIBIT A COMMON CARRIER ENGAGED AS TO ANY PART OF ITS BUSINESS IN INTERSTATE COMMERCE FROM KEEPING ANY BOOKS OR MEMORANDA NOT PRESCRIBED BY THE COMMISSION WITH RESPECT TO ANY BUSINESS WHICH IS NOT UNDER THE ACT TO REGULATE INTERSTATE COMMERCE.

The two corporations in the cases at bar do not derive their corporate existence from the Federal Government. They derive their right to exist, to make contracts, to sue and to be sued, to increase their capital stock, and to diminish it, to keep their books of account, to make their by-laws, to elect their officers; from the States which granted them their respective charters—one, the State of Maine, the other, the State of Michigan.

It is respectfully insisted that Congress cannot interfere with the officers and directors of these corporations, charged with the duty of properly managing them, and require them to keep certain accounts or certain prescribed forms and simultaneously prohibit them from keeping, for their corporate purposes, any records which they see fit respecting corporate depreciation, corporate acquisition of property, or net profits or losses, and the payment of dividends.

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BOOKKEEPING IS NOT COMMERCE.

In response to this argument it may be said that railroad equipment is not commerce, and that this court has put the stamp of its approval on legislation regulating equipment. But—*the court will take judicial notice of the fact that there is a vast difference between a uniform height of drawbars in freight cars, and between a uniform system of accounts common to all carriers, both water and rail.*

The difference is self-evident. The equipment of railroad companies is constantly interchanging, and should be interchangeable.

They are the vehicles in which articles of commerce are carried. Upon their method of construction depends the safety of the employes engaged in the transportation of interstate commerce.

All of these facts emphasize the imperative necessity of a standardization of railroad equipment.

But, it is quite a different thing to say that a uniform system of accounts is necessary either to move articles in interstate commerce, or for the safety of employes in interstate commerce.

It is quite a different matter to say that bookkeeping methods suitable for the New York Central Railroad are equally suitable for some Rocky Mountain System, or some river boat line or a *summer amusement park*.

The regulation of bookkeeping methods is not like the regulation of rates upon which commerce may move, or the regulation of equipment by which com-

merce is carried, or the regulation of highways over which it moves.

The accounting methods of the carriers, it is submitted, are as much within their own authority for their own corporate purposes as is their right to elect officers, pay dividends, or adopt by-laws. It is for the directors to say how for their corporate purposes the books shall be kept, to the same extent as it is their privilege to declare and decide whom they will elect as officers, or whether they will or will not declare dividends.

By the orders entered the officers and directors of these corporations are prohibited from determining what in their judgment shall be a conservative method for the distribution of the corporate earnings in the interest of their stockholders.

They are required to account for their income and disbursements from their amusement parks in the same way and under the same general classification as they are required to account for their income and disbursements from their operation of their several boat lines.

They are required to segregate under specific accounts all of their income and disbursements, though, as a matter of fact, the boards of directors, or their own auditors, or the most expert auditors which they may be able to employ, may determine that the financial situation of the corporation would be best disclosed by handling the accounts in an entirely different method.

The question which we are now considering is not whether the wisdom of the Commission is better than

the wisdom of the directors, *but the question is whether Congress, or the Commission has the right to interfere with the exercise of the discretion of the directors and the stockholders with respect to the property which they own*, and which is not either commerce or the vehicles of commerce, or the highway of commerce, or the employees engaged in handling, or even the preparation of statistics which might be desirable in connection with the regulation thereof.

Upon this point the appellees submit that *Pennsylvania v. Knight* and the Northern Securities case, and the Adair case are conclusive. In the latter case the court said in the 208 U. S., on page 177:

“The power to regulate interstate commerce is the power to prescribe rules by which such commerce must be regulated.”

And again on page 178:

“Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated. But what possible legal or logical connection is there between any employe’s membership in a labor organization and the carrying on of interstate commerce?”

Likewise, we might ask what possible legal or logical connection is there between the carrying on of interstate commerce under the statute and the prohibition running against a corporation owned by the citizens, prohibiting the owners from keeping such accounts for the corporate purposes of the stockholders as they see fit, and requiring them to

adopt a set of rules and regulations affecting their accounting methods, which do not appeal to and are not desired by the directors charged with such matters.

That such a statute and such orders are not a regulation of commerce, but are an unlawful interference with the internal affairs of a corporation, is too evident to admit of controversy.

I X.

**CONGRESS HAS NO POWER TO MAKE A GENERAL IN-
QUISITORIAL EXCURSION OR EXAMINATION INTO
THE INTERNAL AFFAIRS OF A CORPORATION OR-
GANIZED UNDER THE LAWS OF ONE OF THE STATES.**

The power of the states and of the Federal Government being thus clearly defined, let us ascertain what general inquisitorial power, if any, the Federal Government has over the internal affairs of a corporations organized under the laws of a sovereign state.

Certainly it has no general visitorial power. The power of visitation of a state over the corporation which it creates is exclusive.

In *Guthrie v. Harkness*, 199 U. S., 148, the court said:

“The origin and nature of ‘visitorial’ power received full discussion in the case cited by Bouvier from 4 Wheaton. See opinion of Mr. Justice Story in *Dartmouth College Case*, 4 Wheat., 673.

* * * * *

‘Visitation, in law, is the act of a superior or superintending officer, who visits a corporation

to examine into its manner of conducting business, and enforce an observance of its laws and regulations. Burrill defines the word to mean 'inspection; superintendence; direction; regulation.'

At common law the right of visitation was exercised by the King as to civil corporations and as to eleemosynary ones by the founder or donor. 1 Cooley's Blackstone, 481. '*In the United States the legislature is the visitor of all corporation created by it, where there is no individual founder or donor, and may direct judicial proceedings against such corporations for such abuses or neglects as would at common law cause forfeiture of their charters.*' 1 Cooley's Blackstone, 482, note.

* * * In America there are very few corporations which have private visitors, and in the absence of such, the state is the visitor of all corporation."

In the *Sinking Fund cases*, 99 U. S., 720, 727, the court said, referring to the power of visitation:

"That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but, as was said by this court, through Mr. Justice Clifford, in *Miller v. The State* (15 Wall., 498), 'it may safely be affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant, or to secure the due administration of its affairs, so as to protect the rights of stockholders, and of creditors, and for the proper disposition of its assets'; and again, in *Holyoke Company v. Lyman* (Id., 519), 'to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corpora-

tion.' Mr. Justice Field, also speaking for the court, was even more explicit when, in *Tomlinson v. Jessup* (Id., 459), he said, 'the reservation affects the entire relation between the state and the corporation, and places under legislative control all rights, privileges, and immunities, derived by its charter directly from the State'; and again, as late as *Railroad Company v. Maine* (96 U. S., 510), 'by the reservation * * * the state retained the power to alter it (the charter) in all particulars constituting the grant to the new company, formed under it, of corporate rights, privileges and immunities.' "

In *Northern Securities Company v. United States*, the court said on page 348:

"So far as the Constitution of the United States is concerned, a state may, indeed, create a corporation, define its powers, prescribe the amount of its stock, and the mode in which it may be transferred. It may even authorize one of its corporations to engage in commerce of every kind, domestic, interstate and international."

In *Hale v. Henkel*, 201 U. S., 75, a Federal grand jury investigating an alleged crime against the Federal Government demanded the production of certain books and papers. The corporation refused to produce the papers but the court held that for the purpose of the grand jury investigation the corporation might be compelled to produce the books and papers, but at the same time the court said (page 75):

"It is not intended to intimate, however, that it (referring to Congress) has a general visitatorial power over state corporations."

From the foregoing authorities it is quite clear

that the mere fact that a corporation created by a state is engaged in interstate commerce does not give to Congress or to any subordinate body created by Congress, the power to make a general excursion into all of its internal affairs. If Congress has this power it must be predicated upon some other ground.

It must be remembered that it is admitted in these cases that the information desired by the Commission in their special reports, is not in connection with any complaint, or any rate, or any practice of the appellees effecting in any way interstate commerce.

See *Harriman v. Interstate Commerce Commission*, 211 U. S., 407 (419).

THE CASE OF PACIFIC RAILWAY COMMISSION.

The discussion of this subject, however, would be incomplete without the consideration of the case of *In re Pacific Railway Commission*. The commission was created by the Act of March 3, 1887, entitled "An Act authorizing an investigation of the books, accounts and methods of railroads which have received aid from the United States and for other purposes." The Act creating the Commission intended that the information secured by it should be used for the guidance of Congress in performing its legislative functions. On this subject Justice Field said, 32 Fed., 241 (250):

"In addition to the inquiries usually accompanying the taking of a census, there is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment, it may be important to possess. It

may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information of the habits, business, and even amusements of the people. *But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters.* In the pursuit of knowledge, it cannot compel the production of the private books and papers of the citizen for its inspection, *except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence those books and papers contain."*

In the same case Mr. Justice Field also said:

"The law provides for the compulsory production, in the progress of judicial proceedings, or by direct suit for that purpose, of such documents as affect the interest of others, and also, in certain cases, for the seizure of criminating papers necessary for the prosecution of offenders against public justice, *and only in one of these ways can they be obtained, and their contents made known, against the will of the owners.*

In the recent case of *Boyd v. U. S.*, 116 U. S., 616, 6 Sup. Ct. Rep., 524, * * * the court, speaking by Mr. Justice Bradley, said:

'Any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers to convict him of crime or to forfeit his property, is contrary to the principle of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purpose of despotic power but it cannot abide the pure atmosphere of political liberty and personal freedom.'

The language thus used had reference, it is

true, to the compulsory production of papers as a foundation for criminal proceedings, but it is applicable to any such production of the private books and papers of a party otherwise than in the course of judicial proceedings, or a direct suit for that purpose. It is the forcible intrusion into, and compulsory exposure of, one's private affairs and papers, without judicial process, or in the course of judicial proceedings, which is contrary to the principle of a free government, and is abhorrent to the instincts of Englishmen and Americans. (pp. 250, 251.) * * *

* * * In accordance with the principles declared in the case of *Kilbourn v. Thompson*, and the equally important doctrines announced in *Boyd v. U. S.*, the Commission is limited in its inquiries as to the interest of these directors, officers and employes in any other business, company, or corporation to such matters as these persons may choose to disclose. *They cannot be compelled to open their books, and expose such other business to the inspection and examination of the Commission.* They were not prohibited from engaging in any other lawful business because of their interest in and connection with the Central Pacific Railroad Company, and that other business might as well be the construction and management of other railroads as the planting of vines, or the raising of fruit in which some of those directors and officers and employes have been in fact engaged. And they are entitled to the same protection and exemption from inquisitorial investigation into such business as any other citizens engaged in like business." (pp. 253, 254.)

In his concurring opinion in the case, Judge Sawyer said:

"A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed

principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing where the practice under it would end." (p. 263.)

Judge Sabin, who also delivered a concurring opinion in the same case, used much the same language. He said:

"If this power of unlimited, inquisitorial investigation into the affairs of private corporations or companies, or of individuals, and it concerns all alike, shall be once established, who can say where it will end, or what will be its limit of injustice at all times, but more especially when called into exercise in times of political excitement, or under the influence of partisan zeal or passion? In the close adherence to well settled principles of law, founded, upon just observance of the rights of all parties, will we not find the greatest safety alike to public and private rights?" (p. 269.)

In *Interstate Commerce Commission v. Brimson*, 154 U. S., 447, this court referred with approval to the decision in the 32nd Federal and used the following language:

"We do not overlook these constitutional limitations, which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. Kilbourn

v. *Thompson*, 103 U. S., 168, 190. We said in *Boyd v. United States*, 116 U. S., 616, 630—and it cannot be too often repeated,—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employes of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice Field in *In re Pacific Railway Commission*, 32 Fed. Rep., 241, 250, 'of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.'

X.

CONGRESS MAY NOT INQUIRE INTO THE INTERNAL AFFAIRS OF A STATE CORPORATION EXCEPT FOR CERTAIN SPECIFIC PURPOSES.

(1) This naturally brings us to a consideration of the question for what purposes and under what circumstances, if any, the internal affairs of a state corporation may be investigated by the Government or the subordinate officers of the Federal Government. Manifestly a Federal grand jury in investigating an alleged offense against the Federal laws may make such an investigation. This was decided in *Hale v. Henkel*, *supra*, but Congress itself has no right to make fruitless investigations of the private affairs either of individuals or of corporations. *Kilbourn v. Thompson*, 103 U. S., 168 (195).

It was held in that case there existed:

“No general power in Congress or in either house to make inquiry into the private affairs of a citizen.” See *In Re Chapman*, 166 U. S., 661, 668.

Wilson v. U. S., 221 U. S., 361 (384).

On the other hand Congress may inquire into and investigate the private affairs of individuals or corporations when those affairs are material or germane to the consideration of charges involving the integrity of members of the Congress itself.

In re Chapman, 166 U. S., 661, 668.

In *Interstate Commerce Commission v. Brimson*, 154 U. S., the court said on page 478:

“Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen.”

(2) It seems clear that the only possible theory upon which the inquiries propounded in Special Reports, Series No. 10, could possibly be defended, are that they are necessary in aid of the exercise of some power which Congress itself could exercise and could lawfully delegate to a commission.

This, as we understand it, is the contention made by the government.

Let us see what the provisions of the act to regulate commerce are:

Section 1. Defines the persons subject to the act.

Section 2. Prohibits discrimination.

Section 3. Prohibits undue preference.

Section 4. Contains long and short haul clause.

Section 5. Prohibits poolings.

Section 6. Provides for the filing of tariffs.

Section 7. Prohibits combinations.

Sections 8 and 9. Imposes a liability for damages caused by violations of the act.

Section 10. Imposes a criminal liability for violations of the act.

Section 11. Creates the Commission.

Section 12. Confers upon the Commission power to inquire into the management of all common carriers; to *obtain from them such information as shall be necessary* to enable the Commission to perform its duties, and the district attorneys, at the request of the Commission, are required to institute in the proper court necessary proceedings for the enforcement of the act.

Under this provision the Commission has the right to require the attendance of witnesses and the production of books, papers, tariffs, contracts and agreements, and in the event of the failure of the witness to so attend the courts are given jurisdiction to compel such attendance.

Various other provisions are contained for the purpose of enabling the Commission to obtain such requisite information as may be necessary in a particular case or a particular investigation.

Section 13. Provides for litigated cases before the Commission.

Section 14. Provides for the decision which the Commission may make.

Section 15. Provides for investigations to be made upon complaint, or upon the motion of the Commission itself respecting all of the matters, jurisdiction over which is conferred upon the Commission.

Section 16. Provides for the collection of damages awarded by the Commission.

Without going further into the analysis of the various sections it appears under the provisions of Sections 12 to 15 that the Commission has power to require the production of any papers and the attendance of witnesses which have any material bearing to any matter or any charges within the jurisdiction of the Commission.

Coming now to Section 20 it appears to confer in terms upon the Commission authority to inquire into every detail of the carrier's business, interstate and intrastate, irrespective of whether or not any complaint has been filed by any person before the Commission with respect to any matter or thing in connection with the carrier's business or practices, and irrespective of whether or not the Commission is itself investigating upon its own initiative any such matter or thing.

It confers upon the Commission general authority not only to require the specific things mentioned in the first paragraph of Section 20, but any other information which the Commission may require, and it also confers upon the Commission authority to

compel an answer to any question which the Commission may propound. There is no limit to the searching inquiry which the Commission may make. *It is not limited to commerce or to transportation, but it goes into all the internal affairs of the corporate organization of the company irrespective whether those inquiries have any material bearing upon interstate commerce or not.*

This Congress may not do. It was so decided in *Harriman v. The Interstate Commerce Commission*, 211 U. S., pages 407, 417, where this court said:

“The contention of the Commission is that it may make any investigation that it deems proper, not merely to discover any facts tending to defeat the purposes of the act of February 4, 1887, but to aid it in recommending any additional legislation relating to the regulation of commerce that it may conceive to be within the power of Congress to enact; and that in such an investigation it has power, with the aid of the courts, to require any witness to answer any question that may have a bearing upon any part of what it has in mind. *The contention necessarily takes this extreme form, because this was a general inquiry started by the Commission of its own motion, not an investigation upon complaint, or of some specific matter that might be made the object of a complaint.* To answer this claim it will be sufficient to construe the act creating the Commission, upon which its powers depend.

Before taking up the words of the statute the enormous scope of the power asserted for the Commission should be emphasized and dwelt upon. The legislation that the Commission may recommend embraces, according to the arguments before us, anything and everything that may be conceived to be within the power of Con-

gress to regulate, if it relates to commerce with foreign nations or among the several states, * * * it will be seen that the power if it exists, is unparalleled in its vague extent. * * * No such unlimited command over the liberty of all citizens ever was given, so far as we know, in constitutional times, to any commission or court."

The court, after thus discussing the indefinite power given the Commission, used this language, which seems to be decisive of the question at bar (see p. 418):

"Whatever may be the power of Congress, it did not attempt * * * to do more than to regulate the *interstate business of common carriers, and the primary purpose for which the Commission was established was to enforce the regulations which Congress had imposed.*"

Continuing, on page 419, the court said:

"We are of opinion, on the contrary, that the purposes of the act for which the Commission may exact evidence embrace only complaints for violation of the act, and *investigations by the Commission upon matters that might have been made the object of complaint.*"

In that case the court decided two things:

First. That Congress could do no more than to regulate the *interstate business of common carriers*; and

Second. That the Commission could only exact evidence

- (a) Upon complaints for violations of the act and
- (b) Upon matters that might be made the object of complaint.

In that case reference was made by the government to the power contained in Section 20, but the

court said with reference to Section 20 (see page 422):

“All that we are considering is the power under the act to regulate commerce and its amendments to extort evidence from a witness by compulsion. What reports or investigations the Commission may make without that aid, but with the help of such returns or special reports *as it may require from the carrier*, we need not decide.”

See, also,

Wilson v. United States, supra.

ANSWERS TO ALL THE INQUIRIES OF THE SPECIAL REPORTS ARE NOT NECESSARY TO ENABLE THE COMMISSION TO REGULATE INTERSTATE COMMERCE.

This is admitted by the demurrers.

Not only is it admitted but it is conspicuously true. No one can read the questions propounded in these special reports one by one and believe for a moment that they and each of them are necessary in order to enable Congress to regulate interstate commerce.

(a)

Take as illustration question 5 on page 5, in which the Commission requires the “date and authority for each consolidation of state corporations.” What business is it of the Interstate Commerce Commission when and under what authority certain state corporations consolidated?

As was said in *Louisville & Nashville v. Kentucky*, 161 U. S., pp. 677, 702:

“In the division of authority with respect to interstate railways Congress reserves to itself

the superior right to control their commerce and forbid interference therewith; while to the states remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public. *If it be assumed that the states have no right to forbid the consolidation of competing lines, because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of state legislation—a proposition which only needs to be stated to demonstrate its unsoundness. * * **

As the power to purchase, then, is derivable from the state, the state may accompany it with such limitations as it may choose to impose."

Again we ask what business is it of the Commission to require a consolidated corporation to file with it the date and authority for the consolidation?

(b)

Take as an illustration the inquiries propounded under question 11. What has the federal government to do with respect to

- (a) The meetings of the stockholders,
- (b) The total number of stockholders,
- (c) The dates for the closing of the stock books,
- (d) The voting rights of the outstanding securities?

All of these questions refer to and relate solely to the internal affairs of the corporation and have nothing whatever to do and could not by the furthest stretch of the imagination have anything to do with the regulation of interstate commerce.

(c)

Take as an illustration question 14 in which the water carriers are asked to go into details with respect to their cab and omnibus service.

In *Pennsylvania Railroad Co. v. Knight*, *supra*, it was expressly held that the cab service controlled by the Pennsylvania Railroad Company was not interstate commerce and did not come within the jurisdiction of the Commission, or of the Congress, but was within the jurisdiction of the state.

(d)

Take as an illustration the question page 26, in which the carriers are required to return in a separate item the expense of outside operations. This we understand to mean operations entirely separate and distinct from its transportation business—as an *illustration amusement parks*.

It is quite clear that some of these questions have nothing whatsoever to do with the transportation business of the carriers. It is equally quite clear to anyone who will take each question one by one that they throw no light whatsoever upon either the joint rail or water business of the carriers or of the port to port interstate commerce business of the carriers.

If there are any questions which transcend the power of Congress then the whole order must fall because as was said in *Illinois Central v. McKendree*, 203 U. S., 514:

“Nor have we the power to so limit the Secretary’s order as to make it apply only to in-

terstate commerce, which it is urged is all that is here involved. For aught that appears upon the face of the order the secretary intended to apply it to all commerce, and whether he would have made such an order, if strictly limited to interstate commerce, we have no means of knowing."

And as was said in the Trade-Marks cases, 100 U. S., 82, 99:

"If we should in the case before us undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do, namely, make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the act of Congress, and in others under state law."

And as was said in the *Employers' Liability cases*, 207 U. S., on page 501:

" * * * We are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which *it was within the power of Congress to regulate.*"

(4) Utterly ignoring, however, the fact that if any inquiries propounded and covered by the general order exceeded the power conferred by Congress or upon Congress that the entire order must fall, the Commission on the oral argument insisted that it was necessary for them to have all of the questions answered.

First. It will be observed that the Commission does not claim that any complaint was made with reference to any particular rate of any particular

water carrier or of the Goodrich Transit Company or of the White Star Line.

Second. It will be noted that no claim is made that the Commission was investigating upon its own initiative any particular complaint of any water carrier, and especially of the Goodrich Transit Company, and the White Star Line.

Third. It will be observed that it is not claimed that the Commission was investigating generally the entire schedule of charges made by any water carrier, or by the Goodrich Transit Company or by the White Star Line.

The argument is—that *some time it may be desirable.*

In this connection it is interesting to note that this court is now committed to the proposition that a carrier is entitled to earn an adequate return on each class of business that it transacts irrespective of its earnings on any other class of business.

Smith v. Ames, 169 U. S., 526.

St. Louis Hay & Grain Co. v. Southern Railway Co., 214 U. S., 297 (301).

I. C. C. v. U. P. R. R. Co., *supra*.

Be that as it may, it is now clear:

(1) That some of the questions propounded have nothing whatsoever to do by the remotest stretch of imagination with interstate commerce.

(2) That all of the information which might be obtained necessary to adjudicate any question properly coming before the Commission within the meaning of the decision of *Harriman v. Interstate Com-*

merce Commission, can be obtained under other provisions of the act.

(3) That not one of the questions is limited solely to the joint rail and water business.

(4) *It therefore follows, as we suggested in the beginning, that Section 20 and the inquiries based thereon are nothing more nor less than a mere general excursion into all of the internal affairs of the corporation of a sovereign state not expressly granted, and not necessarily incidental thereto, and it and the order entered thereunder are, therefore, void.*

VIII.

AN ANALYSIS OF THE CASES CITED BY THE DEPARTMENT OF JUSTICE.

A. We quite agree with the Department of Justice (as stated on pp. 30 of the Government's brief), that Section 12 of the Act to Regulate Commerce vests in the Interstate Commerce Commission the power and machinery to get the necessary information with respect to any alleged violation of the law or investigation by the Commission.

Indeed we have just shown beyond successful contradiction that Section 20 is a mere general excursion into the internal affairs of the corporation for no particular purpose whatsoever.

B. Under a general heading on page 41 of the Government's brief the Government cites sundry cases in support of its contention that Congress has the right to inquire into the minutest details of the busi-

ness of a carrier engaged as to any part of its business in interstate commerce.

We will endeavor to distinguish these cases one by one.

(1) The case of the *Daniel Ball* has already been distinguished, see brief, page 78, *supra*.

In that case it was held that a steamer navigating the navigable waters of the United States was subject to the regulation of Congress. That is—the instrumentality was subject to regulation but not all the internal affairs of the corporation owning the steamer.

(2) In *Smith v. Alabama*, 124 U. S., 465, this court held that Congress might prescribe the qualifications for engineers engaged in interstate commerce, but with reference to the particular statute of Alabama which established certain rules and regulations * * * as to the qualification of engineers operating railroad companies in that state, the court said (480):

“But the provisions on the subject contained in the statute of Alabama under consideration are *not regulations of interstate commerce*. It is a misnomer to call them such.”

And again on page 482 referring to the railroads the court said:

“The rules prescribed for their consideration and for their management and operation designed to protect persons and property otherwise endangered by their use are strictly within the limits of the local law are not *per se regulations of commerce*.” * * *

Applying the language of this decision to many of the inquiries made in the case at bar it is clear

that they have no relation whatsoever to interstate commerce.

(3) The next case cited by the Government is the case of *Northern Securities Company v. United States*.

In this case the court was engaged in determining whether or not the Northern Securities Company had violated a law of the United States. The Government was prosecuting the defendant in equity for such an alleged violation. The case falls squarely within the distinction heretofore made in this brief.

Indeed, the court said in the opinion, on page 348:

"So far as the Constitution of the United States is concerned, a state may, indeed, create a corporation, define its powers, prescribe the amount of its stock, and the mode in which it may be transferred. It may even authorize one of its corporations to engage in commerce of every kind; domestic, interstate and international. *The regulation or control of purely domestic commerce of a state is, of course, with the state*, and Congress has no direct power over it so long as what is done by the state does not interfere with the operations of the general government, or any legal enactment of Congress. A state, if it chooses so to do, may even submit to the existence of combinations within its limits that restrain its internal trade."

IN THE CASES AT BAR, WE ARE HAVING AN INQUIRY MADE INTO THE VERY MATTERS, REGULATION OF WHICH, UNDER THE DECISION QUOTED, IS LEFT ENTIRELY TO THE STATE.

(4) In *Interstate Commerce Com. v. Ill. Cent. R. Co.*, 215 U. S., 472, the company filed a bill, which among other things sought to restrain an order by

the Interstate Commerce Commission in regard to the distribution of its equipment to the various coal companies along the line of its road. It was admitted in the case that the distribution in question worked a discrimination against the shippers and miners of coal. This court held simply (p. 474) that the equipment used by a carrier in interstate commerce was an instrumentality of such commerce and thereby subject to the regulation *in time of car shortage* where the method of distribution would affect interstate commerce. (See paragraph c to note on page 467.)

That this is the vital point in the Illinois Central case is made clear when the case is compared with the opinion of the Chief Justice in *Interstate Com. Com. v. C. & A. R. R.* to be found on page 479 (480) of the same volume of the Supreme Court Reports, where the court did not hold that there could not be a distribution of equipment by a carrier engaged in interstate commerce which was not subject to the Act to Regulate Commerce or to the regulation of the Commission.

In the light of the decision of the *Alton* case (p. 480), it is quite evident that this court did not decide that question in the *Ill. Cent.* case.

Moreover, to argue that because the equipment of a carrier engaged in interstate commerce is held to be an instrumentality of such commerce, that it, therefore, follows that all of the internal affairs of such a carrier became subject to the control and investigation of the Interstate Commerce Commission requires a marvelous feat of intellectual gymnastics.

(5) The next case cited is the case of *Baltimore & Ohio Railroad Company v. Interstate Commerce Commission*, 221 U. S., 612, 616.

The appellees are not contending, in the cases at bar, for any principles other than those established by this court in the B. & O. case. The B. & O. case involved the power of Congress to require from Interstate carriers reports respecting the violation of the Hours of Service law. The act was attacked among other reasons upon the ground:

That the act as drafted included intrastate employes;

With respect to this point the court held that the act as passed referred only to *interstate* employes; that if the interstate and intrastate operations of a carrier were so interwoven that it was impracticable to divide their employes in such a manner that the duties of those who were engaged in interstate commerce be confined to that commerce exclusively, it was the misfortune of the carriers, but it did not prevent the Federal Government from legislating as to *interstate* employes.

We do not contend for any other principle here.

(6) The next authority cited by the government is the case of *Southern Railway Company v. United States*, 222 U. S., 20, 26.

The distinction between regulating the equipment in use on an interstate roadbed over which interstate traffic is constantly being carried, and between an inquiry into all of the internal affairs of and the regulation of the bookkeeping

methods of all the business of one who as to some of his business is engaged in interstate commerce has been so exhaustively discussed in this brief that we refrain from further consideration of this subject.

C. Again—under another general heading (see page 48) the government cites a number of cases in support of substantially the same contention, to-wit, that the information is essential and that Congress has the power to require information with respect to *all* of the business of a carrier which as to *some* of its business is engaged in interstate commerce.

We will now proceed to a consideration of the cases cited.

(1) We are quite unable to follow the argument which the government attempts to make based upon the case of *St. Louis and San Francisco Railroad v. Gill*, 156 U. S., 649. In that case the legislature of Arkansas fixed a minimum rate of 3 cents a mile. The company attacked it, but it appeared that in the attack the evidence offered did not cover the company's railroad as *entirety in the State of Arkansas but was made with reference to only a portion of the road in Arkansas*. On this state of facts this court said:

"Finally to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses, * * * *within the limits of the State of Arkansas.*"

In other words, this court distinctly held that the company was entitled upon all its intrastate business to earn a reasonable income, and it could only attack the intrastate legislation by showing its effect upon the entire intrastate business.

(2) The case of *Minneapolis and St. Louis R. R. v. Minnesota*, 186 U. S., 257, is wholly foreign to any question which is raised in this litigation.

(3) The next case cited by the Government (Government's brief, page 50) is the case of the *Interstate Commerce Commission v. Brimson*, 154 U. S.

This case was a proceeding under Section 12 of the Interstate Commerce Act. We have no dispute with the position that in any proceeding brought under Section 12 of the Act to Regulate Commerce, it is not only lawful but appropriate, that the Commission should have the power to require the production of papers and witnesses. The position for which we contend, and which has been asserted time and again is that such a proceeding is a different proceeding *from a general offensive roving investigation into all the affairs of a person or corporation which as to some of its business is engaged in interstate commerce.*

(4) The next case cited is the case of the *Interstate Commerce Commission v. Baird*, 194 U. S., 25.

This was a proceeding in a court of equity wherein certain witnesses failed to produce certain papers and contracts pertinent to the question at issue. It can have no bearing whatsoever upon the power of the Commission to require the reports assailed here.

(5) The next case cited by the Government upon this point is the case of the *Baltimore & Ohio Railroad Company v. Interstate Commerce Commission*, *supra*.

At this point in the Government's brief the Government insinuates that this court is committed to the constitutionality of Section 20 as the Commission attempts to interpret it in the orders assailed in the cases at bar.

As a matter of fact in this case the court quoted from paragraph 20 as follows:

"The Commission shall also have authority by general or special orders to require said carriers * * * to file periodical or special * * * reports concerning any matters to which the Commission is authorized or required by this or any other law to inquire or keep itself informed * * *."

The court then held that the particular inquiry was an *inquiry respecting a matter about which the Commission was entitled to be informed*.

The point which the appellees make in the cases at bar is that the Commission under the guise of asserting the power conferred upon them by Section 20 is requiring information with respect to a great many things *about which it has no right to be informed*.

Waiving for the moment the fact that the appellees are water carriers, and therefore are not compelled to report at all, the appellees do not assert that there is no information which the Interstate Commerce Commission might rightfully require from an interstate carrier.

What the appellees do assert is that they have no right to make the inquiries contained in Special Report Series Circular No. 10.

As a matter of fact what the Commerce Court ordered in its decree was:

“It is further ordered, adjudged and decreed that the matter be and the same is hereby referred to the Interstate Commerce Commission to proceed with according to right and justice.”

In other words, the Commerce Court referred the matter back to the Commission to revise its order so that it might not require any information or thing which it was not entitled to have.

(6) The next case cited is the case of *Flint v. Stone Tracy Co.*, 220 U. S., 107.

This case is so different from the cases at bar that it requires but little more than passing notice.

The constitutional provision under which the excise tax was limited gave general power to Congress to levy and collect taxes, duties, imposts and excises. There were no words limiting the power to collect taxes, duties, imposts and excises, to interstate commerce. It was to collect taxes, duties, imposts and excises generally, the only limitation being that they should be uniform throughout the United States. (See 220 U. S., page 50.)

It is quite a different matter to say that for the purpose of levying and collecting taxes over which a general grant of power is given to Congress, an investigation may be made into the private affairs of the citizen, and to say that under the pretended exercise of the power to regulate interstate com

merce, Congress or any subordinate Commission, can make any general roving inquisitorial investigation into the intrastate business of a person or corporation over which Congress has no power whatsoever.

(7) Finally it is said on page 60 of the Government's brief that Section 20 of the Act to Regulate Commerce is not unconstitutional on the ground that it authorizes unreasonable searches and seizures.

From reading it one would infer that the appellees attack Section 20 on the ground that it was unconstitutional, and that one of the reasons asserted therefor was that it authorized unreasonable searches or seizures.

This is a misapprehension of the position of the appellees. The appellees' position with respect to Special Report Series Circular No. 10 is as follows:

(1) The appellees insist that Section 20 of the Act to Regulate Commerce does not grant and was not intended to grant to the Interstate Commerce Commission the right to demand of the water carriers any reports whatsoever.

(2) That Section 20 of the Act to Regulate Commerce does not grant and did not intend to grant unto the Interstate Commerce Commission the right to demand answers to all of the inquiries contained in Special Report Series Circular No. 10 from any carrier, much less to demand it of the water carriers.

(3) The appellees insist that in the event Section 20 should be construed as an intention on the part of Congress to grant to the Interstate Com-

merce Commission the power to demand of all carriers, including the water carriers, answers to all of the inquiries contained in Special Report Series Circular No. 10, then that Section 20 *as so construed would be unconstitutional* because it would be an abuse or an excess of power, to-wit, it would be a burden imposed by Congress upon one engaging in interstate commerce as a condition precedent to his right to so engage. This Congress may not do.

Gibbons v. Ogden, supra, 9 Wheat., 211.

Employers Liability Cases, *supra*, 207 U. S., 463 (502).

IX.

THE GOVERNMENT'S POSITION IS WHOLLY ILLOGICAL AND CONTRADICTIONARY.

1. *As to the interpretation of the act.*

It goes without saying, that if Congress did not intend to subject, and did not by the language used subject, the water carriers, which voluntarily concur in joint rail and water rates, to all of the provisions of the act to regulate commerce, that then these decrees should be affirmed and it would be unnecessary to consider the constitutional questions raised.

On this branch of the case, we respectfully submit that the government has not even pretended to make an argument.

The Government does not contend that the water carriers are subject to any other provision of the Act to Regulate Commerce except Section 20.

Upon the oral argument in the court below, the Government did not contend, and it does not now contend, that the water carriers were subject to the provisions of Section 1 of the Act.

In the court below and in this court the Government does not contend that the water carriers are subject to the provisions of Section 2 of the Act.

In the court below and in this court the Government does not contend that the water carriers are subject to the provisions of Section 3 of the Act.

In the court below and in this court the Government does not contend that the water carriers are subject to Section 4 of the Act.

In the court below and in this court the Government does not contend that the water carriers are subject to the provisions of Sections 5 or 6 of the Act.

In short the Government does not contend that the water carriers are subject to any of the provisions of the Act except Section 20.

By what process of reason the Government can contend that the water carriers are subject to Section 20 of the Act which begins:

“The Commission is hereby authorized to require annual reports from all common carriers *subject to the provisions of this act*”;

and at the same time admit:

(1) that the water carriers are not subject to the provisions of Section 1 of the Act;

(2) that they are not subject to the provisions of Section 2 of the Act which begins:

“Every common carrier *subject to the provisions of this Act*”;

(3) that they are not subject to the provisions of Section 3 of the Act, which begins:

“That it shall be unlawful for any common carrier, *subject to the provisions of this Act*”;

(4) that they are not subject to the provisions of Section 4 of the Act, which begins:

“That it shall be unlawful for any common carrier *subject to the provisions of this Act*”;

(5) that they are not subject to the provisions of Section 6 of the Act, which begins:

“That every common carrier *subject to the provisions of this Act*”;

(6) that they are not subject to any of the other provisions of the Act, all of which begin:

“Common carriers *subject to the provisions of this Act.*”

—we say the process of reasoning by which the Government can make such inconsistent contentions passes any method of reasoning which appeals to the logical mind.

The appellees are constrained to insist that there is no logic in such a position, and apparently no appreciation of the ordinary rules of grammar or meaning of the English language.

A STRAINED INTERPRETATION.

What the government is asking for, is a strained interpretation by the court; an interpretation which cannot be reconciled with any known rule of constitutional or statutory construction. Instead of interpreting the act so as to make it an intelligent and harmonious whole, every provision lending force and meaning to every other provision, *the Com-*

mission has requested the court to place upon the phraseology of the act, an interpretation, which is in express violation of the proviso at the end of paragraph 1, of Section 1; an interpretation which is wholly inconsistent with the interpretation given to every other section of the act; an interpretation which is directly contrary to the interpretation placed upon the act by the Commission for the last quarter of a century.

It is asking the court to ignore the rule established by the court with respect to the contemporaneous interpretation by the Commission in the *New York, New Haven & H. R. R. Co. v. Interstate Commerce Commission*, 200 U. S., 361.

IT IS IN FACT ASKING THE COURT BY JUDICIAL INTERPRETATION TO CREATE OR GRANT A POWER WHICH THE COMMISSION HAS BEGGED CONGRESS TO GIVE AND WHICH CONGRESS HAS REFUSED TO DO. IT IS A POSITION WHICH WE SUBMIT IS WHOLLY INDEFENSIBLE AND SO ILLOGICAL AS TO BE ALMOST AN AFFRONT TO THE INTELLIGENCE OF THE COURT.

2. *As to the constitutionality of the assailed section and orders:*

With respect to the constitutional questions, if it should be necessary to consider them in the decision of this case, the Commission is asking the court to go further than any court has ever gone.

(1) It is asking the court to decide that a law of Congress, or the order of a Commission, which under the pretense of regulating and investigating interstate commerce, does, in fact regulate and investigate intrastate commerce, is valid.

But—no decisions are cited in support of such a contention.

(2) The Commission is asking the court to hold “that because one engages in interstate commerce, he thereby submits all of his business concerns to the regulating power of Congress.”

No decisions are cited in support of this contention, and as was said in the *Employers' Liability Cases*, “to state the proposition is to refute it.”

(3) The Commission is asking the court to decide that Congress can totally divest itself of its legislative power and can confer upon the Commission the right to legislate with respect to a particular subject matter at its discretion, and to change such legislation from time to time.

No decisions are cited in support of such position, and the principle contended for violates the rules of constitutional law enunciated by every writer, textbook and decision on the subject.

(4) The Commission is asking the court to hold that, irrespective of the purpose, Congress has a general inquisitorial power over all of the details of the business of one, who as to any of his business is engaged in interstate commerce.

The Commission admits that there is no express grant of power from Congress to this effect, but it predicates the position upon the theory that it is an incident to the power granted.

Although the demurrers admit that there is no necessary or legitimate relation between the information requested and the interstate

rail and water business of the water carriers, the Commission is trying to maintain the position that the intrastate accounts have some relation to the interstate business, and that because of this relation, *regardless how vague and indefinite it may be, regardless of the fact that it may never be used for any purpose in connection with any dispute, before the Commission, or for any investigation instituted by the Commission, it is, nevertheless, entitled to demand it.*

In short, the position of the Commission is, that they have a right to the absolute, unqualified control over all commerce, whether interstate or intrastate, because of the asserted vague and indefinite relation between the two. No authorities are cited in support of such position, and it is in direct conflict with the decision of this court in the *Employers' Liability Cases*, where the court said (p. 502):

"It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

(3) Such authorities as are cited by the Commission group themselves under two headings, to wit:

(a) Cases where the government assumes regulation of navigable waters of the country;

(b) Cases where the equipment used in interstate commerce is subject to regulation.

But it is quite clear that the right of Congress to regulate the navigable waters of the United States, or the equipment of interstate carriers used in interstate commerce, has nothing whatsoever to do with the right to regulate or inquire into all of the internal affairs of a corporation engaged in the navigation or owning the equipment. In each case where the decisions have come before the court, the court has been quick to limit the control solely to interstate commerce itself. So far as the control of the corporation engaged in business is concerned, in the language of the court, the theory of the government is based upon the assumption "that because one engages in interstate commerce, he therefore endows Congress with power not delegated to it by the Constitution. In other words, with the right to legislate concerning matters of purely state concern." As was said by the court "to state the proposition is to refute it."

CONCLUSION.

As we pointed out in the commencement of this brief, the far-reaching effect of a decision sustaining the contention of the Commission upon these constitutional questions, is almost inconceivable. Let it be once established that under the power to regulate commerce, Congress can regulate *all* of the private affairs of a person, firm or corporation engaged in interstate commerce and at the same time can exercise an inquisitorial power over *all* of the other business, not interstate commerce, of one who is engaged in interstate commerce—and the power of

the states is obliterated, private rights are destroyed and individuals, firms or corporations engaged in interstate commerce are subject with respect to all of their business to the will, whim and caprice of the political party in power.

If the written law requires such a conclusion, we accept it, but we respectfully submit that if the written law does not require it, no such vague and unheard of power should by judicial interpretation, be read into it.

We respectfully submit that the decrees should be affirmed.

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